# TREATISE

ON

# THE LAWS

OF

# Commerce and Manufactures,

AND

# THE CONTRACTS

RELATING THERETO:

WITH

AN APPENDIX OF TREATIES
AND PRECEDENTS.

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# ADVERTISEMENT

TO

## SECOND VOLUME.

IT was originally intended to publish the Treaties and Forms applicable to the First and Second Volumes of this Work as Parts of the Fourth Volume, but it is now considered preferable to print them at the End of this Volume, which will therefore consist of the Residue of the Public Regulations affecting Commerce and Manufactures (as will appear from the following Table of Contents), with a copious Index, concluding at page 492; and then follow the Treaties and other Public Forms, with a distinct Index.

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A

# Treatise

ON

# COMMERCIAL LAW.

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## CHAP. I.

### *Of Ports, Harbours, Port Duties, &c.*

IN considering the commercial law, we proposed to enquire, *first*, how the commerce of any country, and of our own in particular, may be affected by the acts of *foreign* states: *secondly*, how the commerce of our own country, in particular, is affected by her own *municipal* regulations of a *public* nature; and lastly, how such commerce is affected by those municipal regulations, which relate principally to the *private* interests of trade. The *first* division of the subject, which constituted the commercial law of nations, has already been fully considered. Under the *second* division of the subject, and more particularly respecting *foreign* trade, we have already considered the commercial rights of aliens, denizens, and persons naturalized; the navigation and the fishery laws; the importation and exportation regulations; the colonial trade and foreign companies: and the law and practice relating to the duties of customs and excise. In pursuing this branch of our enquiry to its conclusion, some subjects yet remain to be considered, less general indeed in their nature than those to which our attention has been already directed: but yet sufficiently important in themselves, and sufficiently extensive in their consequences, to demand a full and accurate investigation. We will first consider those which respect *foreign* trade, as relating

to ports, havens, roads, harbours, port duties and tolls; light-houses, beacons and sea-marks, pilots and quarantine; and then those which relate to *inland* trade and manufactures.

Of the ports, havens, harbours, roads, &c. of Great Britain.

The superiority of Great Britain over other countries, in a commercial point of view, is in no respect more remarkable than in the number and commodiousness of her *ports*. The extensive line of her sea coast, comprehending upwards of 800 marine leagues, abounds with deep bays and capacious harbours. Her ports are convenient and good for anchorage. Those on the western side of the island are nearly as well situated for the south trade as the French ports, and are far superior to the French in number, safety, and depth of water; and with respect to the northern and the Baltic trades, the situation of France admits of no comparison. Rivers and canals also afford the convenience of water carriage to the inland counties of England, and not only connect them with each other by the internal circulation of trade, but afford an easy and a cheap conveyance to the ocean (1). In considering the subject which we are now investigating, we shall have occasion to enquire, 1st, Into the definition and nature of ports, members, creeks, roads, and havens. 2dly, The establishment and constitution of ports by the king's authority, and the extent of the regal power in this respect, with the provisions introduced by the statute law. 3dly, We propose to treat of the property in the soil or franchise of a port, and herein of the extent of the king's prerogative, in relation to the *jus privatum* in a port — of port duties and the remedy for them, if withheld. 4thly, The public rights incident to a port; the right of access, and how far controlled by the king's prerogative; the right of enacting new tolls; of nuisances and injuries to ports — and the methods of redress, either by common law or by act of parliament.

Definition of ports, members, creeks, roads, and havens.

Lord Hale, in his tract *de Portibus Maris*, after defining a haven to be a place calculated for the reception of ships, and so situated, in regard to the surrounding land, that the vessels may ride and anchor in it in safety, observes, that a *port* is a haven, and somewhat more. For, first, it is a place at which vessels may arrive and discharge or take in their cargoes. 2dly,

(1) Tucker on Trade, 52. 1 Elem. tit. Commerce, 2 vol. 332. Campbell's Pol. Surv. 274. Kett's

It is impressed with its legal character by the civil authority, and has franchises and privileges belonging to it by prescription or the king's grant, and has usually a port-reeve and portmote. 3dly, It comprehends a vill, city, or borough called in Latin the *caput portus*, for the reception of the mariners and merchants, for securing the goods, and bringing them to market, and for victualling the ships (1). The name of the port is derived from the *caput portus*, though the town itself is sometimes accessible only to small vessels or lighters, as Exeter is the *caput portus* of the port of that name, though it is observed by Lord Hale, that no vessels of burthen can come within four miles of it: and the same observation, he says, is true of the port of Dublin in Ireland, of Bristol, and several other ports (2). In its extent a port includes more than the mere place where the ships unlade, and sometimes extends many miles (3). On this account, if a fact be alleged to have happened *in portu de Blakeney*, a *venire facias* may be awarded *de vicineto portus;* and because the court will take notice *ex officio* that the port extends beyond the vill, a *venire facias de Blakeney* has been ruled good. (4) The port of London (of the extent of which it is said the courts take judicial notice (5) ) according to its limits, as settled by the court of Exchequer, has been declared to extend from the promontory or point called North Foreland in the Isle of Thanet, and from thence northward in a supposed line to the opposite promontory or point called the Nore, beyond the Gun-fleet, upon the coast of Essex, and continued westward through the river Thames, and the several channels, streams, and rivers falling into it, to London Bridge; save the usual and known rights, liberty and privilege to the ports of Sandwich and Ipswich, and the known members thereof, and of the customers, comptroller, searchers, and other deputies within the ports of Sandwich and Ipswich,

(1) Hale de Port. Mar. c. 2. c. 6. 1 Harg. 46. 73. Bac. Abr. Prerogative, D. 5. Jac. Dict. tit. Port. Com. Dig. Navigation, E. 4 Inst. 148. Callis on Sewers, 56. Ante, 1 vol. 726.

(2) Hale de Port. Mar. c. 2. Hearne v. Edmunds, 1 Brod. & Bing. 388. Dalgleish v. Brooke, 15 East, 295. and Cases infra.

(3) Hale de Port. Mar. c. 2.

(4) Hale de Port. Mar. c. 2. and see Year Book, 7 Hen. 6. 22—35. sed quære. In general, whether port or not is a question of fact for a jury. 5 Taunt. 713.

(5) Fazakerley v. Wiltshire, 1 Stra. 462. As to port of London extending to Gravesend, see Williams v. Marshall, 2 Marsh. 92. 6 Taunt. 390. Dalgleish v. Brooke. 15 East, 304.

and the creeks, harbours, and havens belonging to them, within the counties of Kent or Essex (1). Each port has various *members* and *creeks* belonging to it. Members are places where a custom-house has been antiently kept, with officers or deputies in attendance; they are also lawful places of exportation and importation (2). The general term *creek*, says Lord Hale, means only an inlet of the sea, or a narrow passage with the shore on each side of it, whether within the precinct or extent of a port or without, and which gives no harbour to ships, nor is endowed with any privileges (3). But the creeks to which we are now alluding, are those which are appointed by the civil authority, as belonging to a port. The origin of these, he observes, was that the king could not conveniently have a customer or comptroller in every port or haven; the custom-officers were therefore fixed at some eminent port, and the smaller adjacent ports became by that means creeks or appendants to the ports at which the officers were placed (4). Creeks then are defined to be places where officers commonly are or have been placed by way of prevention only, and are not lawful places of exportation or importation, without particular license or sufferance from the port or member under which they are placed (5). At these places officers competent to transact the coast business are stationed by order of the board of customs (6). To make these definitions clearer by examples, Gravesend is a *creek* belonging to the port of London. Plymouth is a port, of which Falmouth is a member, and St. Maures a creek (7). A *road* is defined

(1) 1 Beawes's Lex Merc. 6th ed. 249. and see Fazakerley v. Wiltshire, 1 Stra. 468, 9. As to the corporation of London's jurisdiction of the river Thames as conservators of the navigation, see Schultes on Aquatic Rights, 56 to 60. The corporation has no right to make grants of liberties to make embankments on the shore at Milbank, &c. thereby narrowing the river. The King v. Earl Grosvenor and others, coram Abbott, Ch. J. sittings after Trin. 1819. Gurney, Nolan, and Chitty for prosecution; Scarlett and Moore for defendants; and also in Chancery, Henson Att. for prosecution.

(2) 1 Beawes's Lex Mer. 246. 6th ed. Ante, 1 vol. 726.

(3) Com. Dig. Navigation, C. Cal. 34.

(4) Hale de Port Mar. p. 2. c. 2.

(5) 1 Beawes Lex. Merc. 246. Hale de Port. Mar. c. 2., 1 Harg. 50.: and see also Com. Dig. Navigation, C. D.

(6) 15th Report of Com. of Public Accounts, p. 8.

(7) 1 Beawes, 246, 8. Callis on Sewers, 56. and see 6 Taunt. 390. Ante. vol. 1. 726. In Hale's tract de Port. Mar. c. 2. 1 Hargr. 48. a list of the ports and creeks is given, since which time however some alterations have been made. See post Appx. 1 Beawes, Lex Merc. 246. Postlethw. Dict, L. tit. Ports.

by Lord Hale to be an open passage of the sea which, from the situation of the adjacent land, and its own depth and wideness, affords a secure place for the common riding and anchoring of vessels, as Dover Road, Kirkley Road, Hung Road (1). It has been observed that the term roads is not a word of very definite meaning; there may be roads which have no immediate connection with any particular port, as the Downs. Other roads are so connected with particular ports as almost to form a part of them; and these two descriptions of roads may be subject to very different considerations: as if, for instance, from the circumstance of a vessel's being found in a particular road, it should be sought to infer that she was destined to a neighbouring port in order to fix her with unlawful traffic. Now if a ship comes into the Downs, which is the common passage and highway to the German Ocean, and to other parts of Europe, it would not be at all just to infer from the mere coming there that she is necessarily coming to a British port. But if the roads are of the other species, there is then reason to conclude that a ship comes there with a view to some communication with that particular port (2). An *haven* is defined to be a place calculated for the reception and riding of vessels, so situated in regard to the circumjacent land, that ships ride and anchor in it in safety, as Milford Haven, Plymouth Haven, and the like. Some havens, especially the larger ones, are formed by nature; the smaller are formed or at least assisted by art (3). Neither a haven nor a road has those privileges belonging to it which we have before alluded to as appertaining to a port.

A difficulty, however, has sometimes arisen, notwitnstanding the clearness and precision with which the law has defined the meaning of the term port, in ascertaining the exact interpretation of that word in contracts between individuals. In a contract the same expression is frequently susceptible of different interpretations according to the context, the nature of the trade, and other circumstances which manifest the intention of the contracting parties. In the course of the late war, the overruling influence of France having rendered it extremely dan-

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(1) Hale de Port. Mar. p. 2. c. 2.

(2) Case of the Neutrality, 6 Rob. Adm. Rep. 34. Vide Levin v. Newnham, 4 Taunt 722. As to the term road, see also Dalgleish v. Brooke, 15 East, 304, 5.

(3) Hale de Port. Mar. c. 2. And see as to havens, Dalgleish v. Brooke, 15 East, 304, 5. post.

gerous to trade with many countries which apparently retained the forms of a neutral government, a practice prevailed among underwriters who insured vessels to particular parts of the world, to insert a clause in the policy, exempting themselves from responsibility if the property insured should be captured or seized or confiscated in her port of discharge, or sometimes, if it should be captured, seized, or confiscated in port or ports. Where a vessel warranted free from capture or seizure in port was bound for Pillaw, and came to an anchor in Pillaw Roads, a station distant about four or five miles from the custom-house; but at which vessels bound for Pillaw which draw much water, usually bring to, in order to unload some part of their cargo, the harbour at Pillaw being rendered difficult of access by a shifting bar, on which the water is too shallow to admit vessels deeply laden; — and on the arrival of the vessel, a pilot went on board her, who would not allow any thing to be unloaded till the ship's papers had been examined and approved at the custom-house; the Court of Common Pleas determined that the vessel was not in port within the meaning of the warranty, so as to exempt the underwriters from responsibility for a loss by capture (1). But this decision appears to have been over-ruled, and the doctrine now adopted, is, that the word port in a warranty of this nature is not to be taken in a strict sense as meaning the place where the custom-house is situated, or that the vessel must arrive at what is termed by Lord Hale the *caput portus* or *ville* before the warranty will attach; — but that where the vessel has arrived at the elected place of discharge, as for instance, when a ship has come to an anchor in the outer road of Pillaw, which is a bar harbour, where large vessels are obliged to discharge part of their cargoes into lighters to enable them to go over the bar into the inner harbour to discharge the remainder, and the captain has gone on shore to make his report, and to obtain permission and give directions for unloading the cargo, the vessel is considered as having arrived at her port of discharge within the meaning of the warranty; and in one case, though the vessel lay two miles and a quarter further out from the bar than the usual place of anchorage and unloading, yet the court considered it to be a proper question for the jury to determine, whether the vessel was

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(1) Brown v. Tierney, 1 Taunt. 517.

not still within the port, and the jury found that she was. (1) So indeed the word port in a similar warranty was held not to be confined to any technical meaning, but to comprehend the broad part of the river Jahde within which the ship was lying, on and off, as it is termed, in the middle fifteen miles up, and where the river is two miles wide, waiting for instructions where to land, so as best to elude the vigilance of the French officers. (2) But when a vessel, destined to discharge her cargo at Pillaw, anchored at the distance of three English miles from the roadstead at which vessels unload in order to come over the bar into the inner harbour; the court held that this was not an arrival within the meaning of the warranty, the vessel having neither arrived at the port in the ordinary acceptation of that term, nor at the place where vessels are accustomed to unload (3). Whether also the place at which a vessel casts anchor is within her port of discharge, is a question of fact for the jury; if a vessel bound for Pillaw casts anchor in the roads near that port, this is primâ facie evidence of an intent to resort to Pillaw as the market, but other circumstances may be adduced to show that the owner has abandoned that intention, or that he has suspended it, and is waiting for information, whether it is safe to enter the port or not. (4)

Of the establishment of ports, and the king's authority in this respect.

It has been before observed, that the sole right of erecting ports is vested by law in the king, as part of his prerogative (5). So that, at common law, no subject can establish a common port without the king's charter, or a lawful prescription; and if any one presume to do so, the pretended liberty may be seized on a *quo warranto*, and the party fined (6). Nor can the lord of a county palatine, though he may be invested with the franchises

(1) Dalgleish v. Brooke, 15 East, 295, Levin v. Newnham, 4 Taunt. 724. Oom v. Taylor, 3 Campb. 204. Maydhew v. Scott, 3 Campb. 205. Baring v. Vaux, 2 Campb. 541. and cases infra.

(2) Jarman v. Coape, 13 East, 394. 2 Campb. 613. explained 15 East 307. 4 Taunt. 398. and see cases infra.

(3) Mellish v. Staniforth, 3 Taunt. 499. Levy v. Vaughan, 4 Taunt. 387. Keyser v. Scott, 4 Taunt. 660. Reyner v. Pearson, 4 Taunt. 662. Levin v. Newnham, 4 Taunt. 722. Anthony v. Moline, 5 Taunt. 711. 713.

(4) Levin v. Newnham, 4 Taunt. 722. Richardson v. the London Assurance Company, 4 Campb. 94.

(5) Hale de Port. Mar. c. 3. 7. 1 Hargr, 51, 84. 1 Bla. Com. 263, 4. 1 Sir W. Bla. Rep. 590. Britton's case, cited 1 Rol. Rep. 5. Ball v. Herbert, 3 T. R. 261.

(6) Hale de P. M. c. 3. 1 Harg. 50.

of ports by charter or prescription, erect a common port by virtue of his palatine jurisdiction (1): the reason assigned is, that the constitution of a port must necessarily exceed the limits of the *jura regalia* which are incident to a county palatine; for the safety of the whole kingdom, the commerce of the kingdom, and the king's revenue are concerned in it. Merchants and seamen from all parts of the world are admitted into the kingdom publicly, and are under the public protection when they arrive in a public port, and therefore it is said, the erection of such a port is not within the limits of a palatine jurisdiction (2). Neither can a subject erect a port for the use of a particular district, as for his own tenants, &c., unless he has acquired a right to do so by charter or by prescription. Nor, after a grant from the crown of the restricted use of a port, as for the vessels of a particular district to come to abide at, and return from, can the port be enlarged and made free to all comers, without the king's charter (4). Further it appears to have been settled that after the custom duties were established, no subject could arrive with a ship and customable goods of his own at his own land, unless it was a public port where the custom-house officers were appointed; for such a practice would tend to defeat the payment of the duties (5); although it seems, that formerly a man might import his own goods, provided they were not customable, in his own vessel, and unlade them upon his own land (6); and in a case of necessity, arising from stress of weather, an assault of pirates, or a want of provisions, any ship might put into any creek or haven (7). In further confirmation of the king's prerogative in the erection of ports, it may be observed, with respect to the tolls incident to them, that although an individual upon whose land goods are unladen may take a sum of money by way of amends for the trespass, yet he cannot take it as a certain common toll, without a title either by charter or by prescription (8). It is furher observed by Lord Hale, that the ports themselves were designed to find provision for the ships and mariners, and ought

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(1) 1 Harg. L. Tr. 53. 55. Hale, c. 3 & 4. Instances cited of Chester and Pembroke. Bac. Ab. Prerogative, B. 5.

(2) 1 Harg, 53. Bac. Ab. Prerogative, B. 5.

(4) 1 Hargr. 51, 2. Bac. Ab. Prerogative, B. 5.

(5) 1 Hargr. 53.

(6) 1 Harg. 53. 67. Bac. Abr. Prerogative, B. 5.

(7) 1 Hale, c. 3. 1 Hargr. 53. st. 4 Hen. 4. c. 20. s. 5. Ante, 1 vol. 244. 570.

(8) 1 Hargr. 51.

not to be anticipated or forestalled therein, except in case of necessity or for the supply of fishermen, for which purpose all places were considered ports; that every port had therefore necessarily a market belonging to it, (which it is clear could only arise by charter or by prescription) for the disposal of the goods imported or exported, and for supplying the mariners with victuals and provision; and that the erection of victualling-houses between the port town and the sea, was punishable by law (1). It is clear, therefore, that the sole right of erecting ports belongs to the crown; and as the king may grant a free port, so he may qualify his grant, and restrict the use of it to a particular district (2). It is also laid down by Lord Hale, that the king for the convenience of trade may erect a new port near to one already established, and although the old port is prejudiced by the contiguity of the new one, the erection is not unlawful, but the water must not be obstructed, so as to prevent ships from arriving at the former port if they will; nor can a new port be erected within the limits already established in the former port by charter or prescription; nor in such a case can the first port be obstructed or annihilated, or excluded from the reception of vessels, without an act of parliament, because an interest is already settled in the public, which nothing but an act of parliament can divest (3). If the king have an ancient port at A., and he erect another near to it, with a general prohibition that no man shall bring his goods by sea to any other port within five miles of it, the law is said to be, that this prohibition is good as against the king's interest in the former port, though the new port happens to be erected within the precincts of the old, because the king may derogate from his own interest by his own restriction; but that the restriction is not good either with respect to goods customable or not customable against the subjects of the port of A., because they had by usage a right to come with their own shipping and lade or unlade goods, and therefore the inhabitants of A. had an easement acquired to themselves by prescription. But if the king by his own proclamation erect a port at a place at which ships had not previously any right of arrival, and do not grant it to any other person but keep the interest of the franchise in himself, it seems that the king may dissolve this port or erect another, with a prohibition against the arrival of vessels at any port within a certain

(1) 1 Harg. 51. 53. Hale, c. 3.
(2) 1 Hargr. 59.
(3) Hal. de Port. Mar. c. 5. instances, 1. 4, 5. 1 Hargr. 60.

distance from the new one, because neither the inhabitants nor any other subject had a vested right to arrive with their vessels at the former harbour, the privilege of arrival being only permissive and during the pleasure of the king, who is at liberty to derogate from the right vested in himself in the former port (1). It is laid down by Lord Hale that in the king's own demesnes, ports may be erected merely by grant and proclamation, which method is usually adopted when the king establishes a fair or market in his own manor or town (2). If the liberty or erection of it be transferred or granted to another, it is done by patent or charter, and also usually proclaimed in the county (3). In later times the charters granting new ports are drawn with greater fulness than formerly, and express the boundaries of the ports. But the title under which a port is most usually claimed, is by prescription. In confirmation of the king's prerogative power with regard to the appointment of ports, it is further observable, that to each of them a court of portmote is incident; the jurisdiction of which must flow from the royal authority, for the adjudication of matters arising within it. In this court the presiding officer was anciently called a portreeve; but, in more modern times, a mayor and bailiffs have been generally substituted (4).

Statute law with regard to the establishment of ports, members, creeks, quays, wharfs, &c.

In order to secure the payment of the customs, provision was made by acts of parliament in the reigns of Eliz. and Charles the second for issuing commissions to appoint and settle the limits of the ports, members, and creeks, and the lawful places for shipping and discharging goods (5). The statute 1 Eliz. c. 11. provided that all merchandize should be discharged and laden in and upon such open places, quays, and wharfs, as the queen should appoint by virtue of her commission or commissions, within the ports of London, Southampton, Bristol, Westchester, Newcastle, and the suburbs, and in some open places, quays, or wharfs, in all other ports, creeks, havens, or roads, except Hull, where a customer, controller, and searcher, or the

(1) Hale de Port. Mar. c. 5. 1 Hargr. 60. instances 2 & 3. Bac. Abr. tit. Prerogative, B. 5.

(2) Hale, c. 4. 1 Hargr. L. Tr. 58.

(3) 1 Hargr. 59.

(4) 4 Inst. 148. 1 Bla. Com. 264. 4 Id. 413. In Rex v. Mein, 4 T. R. 480. there was a custom to elect a portreeve of borough and manor of F. in Cornwall by homage, consisting of 23 free tenants;—jury found that election was by persons, 21 of whom were not free tenants; held that election void.

(5) Ante, 1 vol. 726.

deputies of those officers, had during ten years past been resident, or should thereafter be resident, under a penalty of forfeiting the goods or their value. Any owner or master of a vessel who should receive on board, or discharge goods contrary to this statute, was also made liable to a penalty of £ 100. The king was further empowered by the statute 13 & 14 Car. 2. c. 11. to issue commissions out of the Court of Exchequer for appointing all such further places, ports, members, and creeks, (except the town of Hull) as could be lawfully made for landing and discharging, lading or shipping goods, within England, Wales, or Berwick, and to set out the proper ancient and head ports to which such places, members, or creeks should belong; and where any such member, creek, or place was appointed by virtue of such commission, the customer, collector, comptroller, and searcher of the head port were to reside, either in person or by deputy, for clearing and passing shipping, and for discharging goods. The commissions so issued were to designate the extent, bounds, and limits of every port, haven, and creek, so that the extent and privileges of each might be ascertained and known. And every person was forbidden to lade from any quay, wharf, or place on the land, on board a ship for exportation, any merchandize, except fish British-taken, sea-coal, stone, and bestials, or to discharge from any vessel not wrecked or leaky, any merchandize except fish British-taken, bestials, and salt, otherwise than upon such open places, quays, or wharfs, as his majesty's commissioners should appoint in the port of London, and the members and liberties thereof, or in any other port, place, member, or creek within England, Wales, or Berwick, without the special sufferance and leave of the commissioners of customs, under a penalty of the forfeiture of the goods (1). This statute only authorizes the assignation of wharfs in open places; and a commission, exceeding the powers of the statute in this respect, is invalid in law (2). The statute 22 Car. 2. c. 11. after providing for the establishment of wharfs and quays, rendered it lawful for any person to lade or unlade goods, on paying wharfage and cranage, at the rates appointed by the king in council (3). In the construction of this statute it was determined, that the wharfingers in London were not entitled to

(1) Ante, p. 726. 13 & 14 Car. 2. c. 11. § 11.

(2) Case of the London wharfs. 1 Bla. Rep. 581.

(3) 22 Car. 2. c. 11. § 46.

wharfage for goods unladen into lighters out of barges fastened to their wharfs. A duty for wharfage and cranage is understood to mean a duty for laying goods upon the wharf; it differs specifically from a duty for anchorage or mooring; in common speech, loading or unloading at a wharf, signifies from or upon the wharf. 1.

Cinque ports.

The *cinque ports* are ancient trading towns lying on the coast of Kent and Sussex, which were selected, from their proximity to France, to assist in protecting the realm against invasion, and invested with certain privileges by the royal charter. The ports so privileged, as we at present account them, are Dover, Sandwich, Romney, Hastings, Hythe, and the two ancient towns of Winchelsea and Rye; although the two latter places appear to have been originally only members (2). The services which they were appointed to perform were either honorary, viz. assisting at the coronation and sending members to parliament, or auxiliary to the defence of the realm, as furnishing a certain supply of vessels and seamen on being summoned to that service by the king's writ (3). In process of time, the cinque ports grew so powerful and by the possession of a warlike fleet so audacious, that they made piratical excursions in defiance of all public faith; on some occasions they made war and formed confederacies as separate independent states (4). It seems, however, that these irregularities were soon suppressed when the government was strong and sufficiently confident to exert its powers. So long as the mode of raising a navy by contributions from different towns continued, the cinque ports afforded an ample supply, but since that time, their privileges have been preserved, but their separate or peculiar services dispensed with. Their charters are traced to the time of Edward the Confessor; they were confirmed by the Conqueror, and by subsequent monarchs (5). William the

(1) Stephen v. Coster, 1 Sir W. Bla. Rep. 423.

(2) Jac. Dict. tit. Cinque Ports, 1 Hale de Port. Mar. p. 2. c. 9. p. 107. 1 Macph. Ann. 430. A. D. 1277. See their limits, 48 Geo. 3. c. 130. § 20.; and see 26 Geo. 2. c. 19. s. 10.

(3) Hargr. de Port. Mar. p. 2. c. 12. Jac. Dict. tit. Cinque Ports.

(4) 1 Macph. 484. A. D. 1317. — 394. A. D. 1242.

(5) Hale de Port. Mar. p. 2. c. 12. Macpherson, Ann. Com. 394. Jac. Dict. tit. Cinque Ports. 2 Adolph.

Conqueror, considering Dover castle the key of England, gave the charge of the adjacent coast, with the shipping belonging to it, to the constable of Dover castle, with the title of Warden of the Cinque Ports, an office resembling that of the Count of the Saxon coast (*Comes littoris Saxonici*) on the decline of the Roman power in this island. The lord warden has the authority of admiral in the cinque ports and their dependencies, with power to hold a court of admiralty; he has authority to hold courts both of law and equity; is the general returning officer of all the ports, parliamentary writs being directed to him, on which he issues his precepts, and in many respects he was vested with powers similar to those possessed by the heads of counties palatine. At present, the efficient authority, charge, or patronage of the lord warden is not very great; the situation is however considered very honourable, and the salary is £3000. He has under him a lieutenant and some subordinate officers, and there are captains at Deal, Walmer, and Sandgate castles, Archcliff fort, and Moats Bulwark (1). There is an exclusive jurisdiction in the cinque ports (before the mayor and jurats of the ports) (2), into which exclusive jurisdiction, the king's ordinary writ does not run, that is, the court cannot direct their process immediately to the sheriff as in other cases (3). In the cinque ports the process is directed to the constable of Dover Castle, his deputy or lieutenant. (4) A writ of error lies from the mayor and jurats of each port to the lord warden of the cinque ports in his court of Shepway, and from the court of Shepway to the King's Bench; a memorial of superiority reserved to the crown at the original creation of the franchise (5). And prerogative writs, as those of habeas corpus, prohibition, certiorari and mandamus, may issue for the same reason to all these exempt jurisdictions; because the privilege that the king's writ runs not, must be intended between party and party, and there can be no such privilege against the king. (6)

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(1) Id. ibid.; and as to the officers in the cinque ports see 48 Geo. 3. c. 130.

(2) 4 Inst. 224. Jenk. 190. Keilw. 880. But if privilege be not pleaded, the judgment is binding, id. ibid. Wood's Inst. 519. Jac. Dict. tit. Cinque Ports.

(3) Williams v. Gregg, 7 Taunt. 233.

(4) Tidd. Appx. ch. 7. s. 16.

(5) 4 Inst. 224. Jenk. 71. 1 Sidd. 356. Jac. Dict. tit. Cinque Ports. 3 Bla. Com. 79.

(6) Cro. Jac. 543. 1 Nels. Abr. 447. 3 Bla. Com. 79. Jac. Dict. tit. Cinque Ports.

2d. Of the rights incident to a port.

The *jura portatica*, or rights incident to a legal port, are of three kinds, viz. the *jus privatum*, the *jus publicum*, and the *jus regium*; the right of individuals, the right of the public, and the right of the sovereign in a port. The property in the soil, and the property in the franchise of a port, the former of which may be vested in the crown, and the latter must be either actually or presumptively derived from him, will be considered together with the incidental rights and obligations under the first division, as forming part of the *jus privatum*, because both species of property are capable of being transferred to a subject. This division includes also the consideration of port duties; the second branch of the subject comprehends the right of the public, as it regards, first, the right of access to a port; and, secondly, the reformation of nuisances and abuses in it. In the course of our enquiries into these two descriptions of right, we shall have occasion to consider the prerogative right of the crown in a legal port, both as it regards the safety and defence of the realm, as it relates to commerce, and as it regards the payment of the customs (1). The last branch of the subject has been already alluded to in a former part of this treatise. (2)

Property in the soil or franchise of port.
1. Port duties, and the remedy for them if withheld.

The *jus privatum* in a port is of two kinds, the interest in the soil, and the interest in the franchise. This franchise is termed by Lord Hale the *formale constituens* of a port, being in truth that from which it derives its legal existence. Of common right, the king is *prima facie* lord and owner of every sea-port; although both the property in the soil, and the property in the franchise may be vested by prescription, either in a subject or in the crown; and they are usually and most properly in conjunction, but they may be divided and exist in the hands of different owners. If A. have the property in a creek, or harbour, or navigable river, the king may nevertheless grant the liberty of a port thereto, and so the interest in the soil and in the franchise may be divided. For although the property in the soil of a creek or harbour belongs to a subject or private person, yet if no port be established, the king has still his *jus regium* in it, and any person is at liberty to resort to it with his boats and vessels as against all but the king. The grant

(1) Vide Hale de Port. Mar. passim, same division, and by Hale, C. J. Prideaux v. Warne, Freem. Rep. 355.

(2) Ante, 1 vol. 726.

therefore produces no injury to the owner of the soil, for he continues to enjoy what he had before, viz. the interest in the soil, and consequently the improvement of the shore, and the liberty of fishing; the only operation of the grant is to erect a port which is open to the public (1). So much for the interest of the owners of the port in the soil or in the franchise. There is another interest worthy of consideration, viz. the interest in the soil of the shore contiguous to the port. If a subject have the property in the ripa or bank of a port, the king cannot grant a liberty to unlade upon this bank without the consent of the owner, for that would be a prejudice to the private interest of A., which cannot be taken from him without his consent. And therefore in the creation of a new port, either by proclamation or charter, it has been usual, says Lord Hale, to secure the interest in the shore beforehand, for building wharfs and quays, and houses of reception for merchandize. Although therefore, he says, the interest of the owner of the port and the interest in the adjacent shore are in their nature several, yet it rarely happens, but that the king or other owner of the port has a convenient portion of the shore or adjacent land at which wharfs, and quays, and warehouses may be built (2). The remaining species of the *jus privatum*, mentioned by Lord Hale as incident to a port, is, independently of the various liberties which a port town may acquire by the king's charter, or by prescription, or by act of parliament, the privilege of furnishing, if it be able, the provisions for the ships and mariners that come to the port, so that the port is not allowed to be forestalled, either by supplying provisions before the vessels arrive at it, or by erecting new buildings between the port and the sea, which may withdraw the mariners from the port, and tend also to deprive the king of his customs (3). It is said to be otherwise, if the building be erected above and not below the port, or if they be erected without the precincts of the port.

The duties or charges incident to ports are divided into two species; viz. first, those which arise from the *jus dominii*, or right of ownership in the property or franchise of a port, and secondly, those that are derived from the property in the adjacent shore. They are enumerated by Lord Hale with his

(1) 1 Hargr. Tr. 73. Hale de Port. Mar. c. 6.
(2) Hale de Port. Mar. c. 6. 1 Harg. 73. 76.
(3) Hale de Port. Mar. c. 6. 1 Harg. 79–83.

usual elaborate exactness. Of the former description of duties some are termed ordinary, or common, being such as are incident to the ownership of almost every port; others arise by special usage or prescription. The ordinary duties are, 1. *Anchorage,* or a toll for every anchor cast there, and sometimes it is payable, although there is no anchor (1). This duty properly and *prima facie* arises in respect of the property in the soil, and is an evidence of it. Sometimes, however, the anchorage becomes due to the owner of the port, although the adjacent shore belongs to another person, as is said to be the case with respect to the harbour of Plymouth. A similar duty is mentioned called *ballastage,* or a toll for the privilege of taking up ballast from the bottom of the port. This arises from the property in the soil. Such a liberty in the Thames is said to have been granted by the king to the Trinity House without any toll for it (2). Other port duties that may be due to the owner of the port by special custom or prescription are termed by Lord Hale, russelage, keelage, average primage, and pettloading, lestage, and prisage (3). These duties were sometimes called tolls, sometimes consuetudines; and when they were in the king's hands, and not vested in a subject by grant or by prescription, the king by his charter might and often did grant discharges of them, as well as of other inland tolls; but when they had been previously vested in the subject by grant or prescription, the king could not discharge them by his charter (4). The duties which are considered by Lord Hale to be claimable in respect of the interest in the adjacent shore, though the property in the shore is usually vested in the owner of the port, are, 1. Towage. 2. Moorage. 3. Terrage (5). 4. Cranage (6). 5. Wharfage (7) or keyage. 6. Housellage. 7. Weighage (8), called either *tronage* for weighing wool at the king's beam, or *pesage,* for weighing other avoirdupoise goods. 8. Measurage (8); and there are some others of the same description (9). The statute

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(1) Vide the case of the London Wharfs, 1 Sir W. Bla. Rep. 413—426.

(2) Harg. Hale de Port. Mar. c. 6. p. 74.

(3) Vide Abbott on Shipping, p. 3. c. 6. p. 282.

(4) Hale de Port. Mar. c. 6. 1 Harg. 75.

(5) See more of these, post.

(6) Vide Bolt v. Stennett, 8 T. R. 606. and post.

(7) Vide 1 Bla. Rep. 581. & post.

(8) Mayor of Yarmouth v. Eaton, 3 Burr. 1402. Mayor, &c. of London v. Hunt, 3 Lev. 37. Assumpsit lies for weighage against the master of the ship, though he be not the owner.

(9) 1 Harg. Hale de Port. Mar. c. 6. p. 76.

22 Car. 2. c. 11. having provided for the establishment of wharfs and quays at London, and rendered it lawful for any person to lade or unlade goods thereat, on paying wharfage and cranage to the respective proprietors, at the rates appointed by the king in council, it was determined that the wharfingers in London were not entitled to wharfage and cranage for goods unladen into lighters out of barges fastened to their wharfs. The act gives a duty for wharfage and cranage, not for anchorage or mooring; and therefore it seems necessary that the goods should arrive at the wharf. And the order in council cannot extend the claim beyond the meaning of the act of parliament. (1)

The *title* to these duties may arise, either first, by convention or agreement; or secondly, by prescription or custom; or thirdly, by charter or grant. With respect to conventional duties it has been before observed, that no man can erect a public port *de novo* without the king's licence: neither could he, at common law, take any fixed rates for landing goods without the precincts of a port, although he might make a particular agreement with every individual who came upon his property to land goods with his consent, provided it was not unlawful to land them there (2). Any subject, however, may, at common law, for his own private advantage, set up a wharf or crane in a port town, and take what rates he can agree upon with his customers for cranage, wharfage, housellage, pesage, although we have already shewn that this general right was limited for the purpose of securing the customs by the stat. of Eliz. and Car. (3) But if the king or a subject have a public wharf to which all persons that arrive at the port must come and lade or unlade goods, either because they are the only wharfs licensed by the queen (4), or because there is no other wharf at the port, in such a case no arbitrary or excessive duties can be taken for cranage, wharfage, or pesage, &c.; but the duties must be reasonable and moderate, although settled by the king's licence or charter, for the wharfcrane and other conveniences are now affected with a public interest and cease to be merely *juris privati*, in the same manner, says Lord

(1) Stephen v. Coster, 1 Bla. Rep. 426.

(2) Morgan's case, 11 Car. K. B. ante, 7, 8. Hale L. Tr. c. 3. 1 Harg. 51. 77. 2 Roll. Abr. 171. l. 10. Com. Dig. Toll, F.

(3) Ante, 8.

(4) 1 Eliz. c. 11. & ante, 8. 10.

Hale, as if a man set out a street in new building on his own land, the public acquire an interest in it. But, it is further observed by the same author, the king may, by his charter, license the owner to take reasonable tolls, when a new port or wharf is dedicated to the public, because the owner is to be at the charge of maintaining and repairing it, and is to find the conveniences for using it, as cranes and weights (1). If an action be brought for a trespass in using a crane, it is sufficient for the defendant to plead, that the quay on which the crane was erected was a public, open, and lawful quay, within the port and city of London, between London bridge and Blackwall, for the landing of all customable goods of the merchants importing them, for a reasonable compensation to be paid by the merchants to the owner of the quay, that the crane was necessary for unlading goods, and was used by the defendant for that purpose (2). 2. The second species of title by which duties of this nature may be claimed, is by prescription. Thus, in almost all antient ports, the duties above-mentioned of cranage, wharfage, housellage, &c. are settled by long usage and prescription; and the sums to be paid are limited: sometimes they remain vested in the king or lord of the port, but they are more frequently granted to the towns, called the *capita portuum,* and become parcel of their farms, as in Newcastle, Kingston-upon Hull, and other places. It was held, therefore, in an action brought for port duties by the corporation of Yarmouth, that it was a sufficient title for the corporation to shew that the mayor, aldermen, burgesses, and commonalty of the borough of Great Yarmouth, were entitled to a duty or toll called measurage from every merchant exporting corn or grain from the port of Great Yarmouth; that is to say, to a duty of two-pence for every last of corn or grain measured and exported; and so to shew that the defendant became liable to the duty for corn exported by him, without stating that the corporation was the owner of the port, or that there was any consideration for the claim, or any other title but the prescriptive right (3). And the same point was determined in favour of the corporation of Exeter (4). So a claim by the corporation of London, for weighage of goods brought

(1) Hale de Port. Mar. c. 6. p. 78.

(2) Bolt v. Stemett, 8 T. R. 606. 608. note b.

(3) Mayor, &c. of Yarmouth v. Eaton, 3 Burr. 1402. Mayor of Exeter v. Trimlet, id. 1405.

(4) Mayor of Exeter v. Trimlet, 3 Burr. 1405. C. P.

into the port of London, was holden good; for it was said, the liberty of bringing goods into a port which is of itself a place of security for vessels, affords a sufficient consideration for the payment of the duty (1). A prescription, therefore, for toll as incident to a port, is valid, without alleging any other consideration; and, indeed, the owner of a port is bound to repair it, and if he neglect, is liable to be indicted (2). For a similar reason, a custom in the city of London that the porterage from any vessel on the river, and meterage of corn, roots, &c. imported or exported upwards from Staines bridge to London bridge, and downwards as far as Yendal in Kent, and that none but porters free of the city shall carry such corn, &c. has been held good, principally on account of the obligation of the city to provide porters skilful in such employment, and of the consequent benefit derived by the merchant from having proper persons ready to assist him as soon as he comes into port, and not being obliged to search for porters who may be strangers to him (3). And where the lord of a manor, in consideration of keeping and repairing a wharf within his manor, presumed for toll on all goods landed within the manor though not at the wharf, such prescription was holden good, as an easement of the manor, all the lands of which must be presumed to have been originally in the hands of the lord, and therefore such toll was not to be considered as a toll traverse and not a toll thorough (4). But where the lord, in consideration of repairing a quay, claimed toll on all goods brought into the river, although landed at a distance from the quay and without the manor, the prescription was held void, although Lord Hale said the case might have been different, if such a claim had been made in respect of a port, and for goods brought within it (5). Independently, therefore, of a benefit derived from the use of a port, quay, or wharf, &c. no claim can be supported for a toll for passing along a public navigable river running through the claimant's manor, for such a prescription is against the common right of all subjects of the realm (6);

(1) Mayor, &c. of London v. Hunt, 3 Lev. 37.

(2) Wilkes v. Kirby, 2 Lutw. 1519. 1523.

(3) Per Pratt, C. J. in Fazakerly v. Wiltshire, 1 Stra. 468.

(4) Colton v. Smith, Cowp. 47. Crispe v. Belwood, 3 Lev. 424. cited Prideaux v. Warne, 2 Lev. 97.

(5) Prideaux v. Warne, 2 Lev. 96. 1 Mod. 104. S. C. Freeman's Rep. 355. S. C.

(6) Mayor, &c. of Nottingham v. Lambert, Willes, 111.

and where the city of Norwich, in consideration of repairing a quay, claimed to be entitled by custom to a certain toll for all vessels passing through the river by the quay, the custom was held void as to all vessels which did not unload at the quay, or at some other place in the city; for this reason,—that the claim made was a mere toll thorough for using a public river, without any consideration extending to the river itself (1). But to a public port, tolls and duties are incident of common right. Lord Hale observes, that these prescriptive charges cannot be increased beyond their usual rate or number, for that it is part of the *jus publicum* of a port to have access to it in the accustomed manner. He observes, that the presuming to take new tolls is punishable on an indictment by fine and imprisonment (2). The port duties of the third description, viz. those that are claimed by patent, are described by Lord Hale as accidental, occasional, or temporary. Where, says he, there is a necessity to build a new quay, or to repair the old, it has been usual for the kings of England to grant temporary and reasonable tolls of all ships and merchandize coming into the port, expressing in the patent the particular sums that are to be taken. The same course has been adopted for building a new wall about the port town, or for repairing an old wall; and other instances of the same nature might be given. Such duties are valid in law, on the ground that there is a consideration for the payment of them; the subject has *quid pro quo*, and the duty ceases when the proposed work has been completed. (3)

The *remedy* for the *subtraction* of *tolls* or *port duties* is either by distress or by action. The remedy by distress is incident to a claim for toll which is due of common right (4). Such a distress is not strictly confined to the property of the person on whose account the toll is payable, for where a port toll was due on goods exported, the owner of the ship was considered, with reference to the proprietors of the toll, to be the exporter of the goods, so as to render the sails of his ship liable to be dis-

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(1) Haspurt and Wills, 1 Ventr. 71. S. C. Heshord v. Wills, 1 Siderfin, 454.

(2) Hale de Port. Mar. c. 6.

(3) Hale de Port. Mar. c. 6. 1 Harg. c. 78. Com. Dig. Toll, E. Moore, 474.

(4) Hickman's case, Noy, 37. Bradley on Distresses, 193. Vide Com. Dig. tit. Distress, A. 1.

trained upon for the duty (1). If a corporation be entitled to a toll of five-pence per chaldron on all coals shipped at a certain port, the tackle of the ships on board of which the coals are laden, or the coals themselves, may be distrained, at the election of the party, for non-payment of the toll (2). But the right of a corporation to take toll cannot be supported in evidence by an entry in the corporation books, stating that the toll had been paid on a former occasion; for although entries of a public nature in the books of a corporation are admitted as evidence of the facts stated, yet it is otherwise with entries of a private nature, since to allow them to be evidence would be to enable the corporation to fabricate evidence for itself (3). An action of assumpsit or debt is maintainable for port duties as well as other tolls (4); and an action on the case is maintainable for a disturbance or subtraction of them (5). Under an agreement in a charter-party to pay certain pilotage and port charges for an entire voyage, no apportionment will be made of these duties, although a part only of the cargo is delivered, but the whole of the pilotage and port charges must be paid. (6)

4. Of the right of access to the ports of this country, and how controlled by the power of the crown; of new tolls; of nuisances; and how remedied by common law and statute.

The *jus publicum*, or interest of the public in the ports of this country, may be considered as it relates, 1st, to the freedom of access to them: 2ndly, to the imposition of tolls; 3dly, the removal of nuisances. Immediately upon the establishment of a legal port, it becomes affected with the *jus publicum*, the principal requisite of which is, that it should be free and open for subjects and foreigners to resort to and depart from it with their merchandize. This general liberty, however, was at common law liable to be controlled and modified by the exercise of the king's prerogative. Thus, in order to avert the mischiefs that might arise from the encroachments of the subjects of a foreign power, the king, whenever he sees occasion, may prohibit fo-

(1) Vinkersterne v. Ebden, 1 Ld. Raym. 384. 1 Salk. 248. S. C. Carth. 357. 5 Mod. 359. Mayor of London v. Hunt, 3 Lev. 37.

(2) Id. ibid.

(3) Marnage v. Lawrence, MSS. 3 B. & A. 142.

(4) Seward v. Barker, 1 T. R. 616. Company of Feltmakers v. Davis, 1 Bos. & Pul. 102.

(5) 1 Chitty on Pleading, 3d ed. 370. 2 Saund. 113. a. 172 1. n. 1. 6 East, 138. n. a. Willes, 654. Owen, 109. Cro. Jac. 43.

(6) Christy v. Row, 1 Taunt. 300.

reigners, and in time of war even foreign merchants (1), from coming into the realm (2), or abiding in it after they have arrived (3); or he may, by a particular inhibition, or by proclamation, prohibit any one of his own subjects, or his subjects in general, from leaving this country (4), or may command the return of such as are resident abroad (5). But with regard to the king's prerogative power over ports, so far as it relates to prohibiting the exportation or importation of goods, it appears that although the king by virtue of his prerogative may in time of war issue a proclamation to prohibit the exportation of arms, ammunition, victuals and money (6), and although similar proclamations have been actually, but it seems illegally (7), issued in time of peace on occasions of scarcity, yet, since the acts of parliament that have been passed for the support and increase of trade, and for keeping the sea open to foreign and English merchants and merchandize (8), there is now no other method of restraining the importation and exportation of goods in time of peace except by act of parliament (9). So it is observed by Lord Hale, that the king could not for the security of the customs, by virtue of his prerogative alone, and without the aid of an act of parliament, restrain the importation and exportation of goods to particular ports, because all public ports were free and *juris publici* (10). And, therefore, a grant by Queen Mary to the bailiffs and burgesses of Southampton, that no malmseys should be imported at any place but Southampton, under a penalty of forfeiting treble custom, was held void; first, because

(1) 1 Hale de Port. Mar. p. 2. c. 8. 1 Harg. 90. Not merchants, except in time of war, id. 92.

(2) 1 Hale de Port. Mar. p. 2. c. 8. 20 Hen. 3. m. 13. Great men of France, or persons bringing bulls, 15 H. 3. m. 18.

(3) 1 Bla. Com. 260. 56 Geo. 3. c. 86. ante, 1 vol. 143. 377, 8.

(4) Harg. 1 Hale de Port. Mar. p. 2. c. 8. p. 91. Fitz. N. B. 85. As to the writ of ne exeat regno, its original purpose, &c. see id. ibid. 2 Bridgm. Index, 362. tit. Ne exeat.

(5) Marryat v. Wilson, 1 Bos. & Pul. 443. Bac. Abr. Prerogative, c. 4. 3 Inst. 180.

(6) 1 Bla Com. 270. Delmada v. Motteux, Park Ins. 357.

(7) 7 Geo. 3. c. 7. 1 Harg. L. Tr. Pref. p. 27, 8, 9. de Port. Mar. p. 96, 7. and see 1 Edw. 4. c. 5. 1 E. 2. P. M. c. 5. 25 Hen. 8. c. 2. 9 Edw. 3. c. 1. 19 Hen. 7. c. 15.

(8) Vide Magna Charta, c. 30. 18 Edw. 3. c. 3. Com. Dig. Navigation, I. 1. Trade, A. 1.

(9) 1 Harg. Law Tr. 97. p. 2. c. 10.

(10) Hale de Port. Mar. p. 2. c. 10. 1 vol. 99.

the restraint was contrary to law; and secondly, because the assessment of treble custom by the royal authority was also illegal (1). From which case it is evident that the king cannot assign any ports in particular for the importation and exportation of particular goods; and it is also clear that the king cannot assign some of the ports in exclusion of the rest, for the importation and exportation of all customable goods (2). The inadequacy of the prerogative power to this end, occasioned the passing of the statutes 4 Hen. 4. c. 20. 1 Eliz. c. 11. and 13 & 14 Car. 2. c. 11. (3)

The right of the public to the use of legal ports being thus established, there are certain incidental privileges which flow from and are inseparately connected with it, viz. that no new tolls or charges should be imposed, nor the old increased, without sufficient warrant; that the ports themselves should be preserved from nuisances which may obstruct the arrival or stay or departure of ships, or the discharge and loading of merchandize. The means by which a port may be obstructed so as to constitute a nuisance, are of course infinitely various: as, 1. By silting or choaking up the port, either by sinking vessels in it or by throwing out filth or trash so that it becomes choaked (4). 2. Decays of the wharfs, quays, and piers, which are designed for landing goods and for the safeguard of shipping. 3. Leaving anchors in the port without buoys or marks, so that ships are liable to strike against them and be damaged. 4. Building new wears or increasing the old, so that the navigation or passage of vessels is obstructed (5). 5. Straitening the port by building too far into the water where ships might formerly have ridden, and in such a case whether the erection is a nuisance or not is a question of fact (6). 6. Impeding or hindering the mooring of ships on the adjacent ground, even without paying any thing for it, if such have been the practice; or if the port be new, it seems

(1) Hale de Port. Mar. p. 2. c. 10. 1 vol. 99.

(2) Hale de Port. Mar. p. 2. c. 10. and see stat. 28 Edw. 3. c. 13.

(3) Ante, 1 vol. 726.

(4) Vide 54 Geo. 3. c. 159. sect. 11. and post, 26. Bruckles-bank v. Smith, 2 Burr. 656.

(5) 46 Geo. 3. c. 153. s. 1. and post, 26. 2 Inst. 30. Mag. Charta, c. 16.

(6) Atty General v. Richards, 2 Anstr. 603. and post. 46 Geo. 3. c. 153. ante, 26. The King v. Earl Grosvenor and others, ante, 4. note 1.

that the mooring of ships, being for the general good of commerce, ought to be allowed in consideration of reasonable amends. 7. Impeding the towage or haling of vessels up and down a river or creek to and from the port town. With regard to this right, it is observed by Lord Hale, that where a custom has prevailed for the public to enjoy it without paying any thing, such a custom is good and ought to be allowed, for it is *pro bono publico*; and that a right of this nature, being only an easement, may be said to belong to passengers or inhabitants, or generally to all comers. He instances the custom of Kent, for fishermen to dry their nets upon the land although it is private property. Without a custom to the contrary, he observes, that some remuneration may be demanded by the owner of the soil, but that the public ought to have the liberty of paying, and that the sum to be paid should be reasonable (1). But whatever rights of this nature may exist with regard to the banks of the sea and to ports (2), it has been determined by the court of king's bench that there is no general right vested in the public at common law to tow on the banks of a navigable river (3). 8. Lastly, with regard to common nuisances in ports, Lord Hale lays it down that a port or public passage must not be obstructed: if it be in any degree stopped, it must be scoured, and cannot be wholly filled up although another cut is made which is as beneficial as the former, without an inquisition by writ of *ad quod damnum*, finding that no public damage will be sustained, and the king's licence obtained thereupon. (4)

The methods appointed by law for preventing and remedying these nuisances are of two kinds; namely, those which exist at common law, and those provided by particular acts of parliament. As the common law hath intrusted the king with the patronage and protection of the *jura publica*, as highways, public rivers, ports of the sea, &c., so the care of preventing and reforming public nuisances is delegated to him and his courts of justice; the prosecutions for them are in his name, and the fines for defects or annoyances in them are a part of his revenue. At common law, however, there are several courses to

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(1) 1 Hale de Port. Mar. p. 2. c. 7. p. 87.

(2) 3 T. R. 363.

(3) Ball v. Herbert, 3 T. R. 253. and cases and authorities there collected; and see the King v. Tippett, 2 Barn. & Ald. 193.

(4) 1 Hale de Port. Mar. p. 2. c. 7.

be pursued with regard to the removal of nuisances, some of which are provisional, and some remedial. Formerly, in some cases, the king issued mandates out of the court of chancery to the mayor and chief officers of the ports, to provide against nuisances in them. In other cases, the king granted tolls for the repair of quays in ports called *heyagium*: these two methods of redress have been termed the provisional courses. The remedial courses appointed by the common law are also twofold; namely, by abatement, or by legal process. The practical remedy by abatement or removal of the nuisance is, indeed, to be exercised cautiously, on account of the tumult and confusion to which it is likely to give rise. It is, however, true, that at common law any person may justify the removal of a common nuisance either on the land or in the water, because the removal of it is a matter of public concern (1); but the most usual method of redress is by the process of the king's courts. If the nuisance be within the body of a county, the ordinary remedy at common law is by indictment or presentment in the courts of criminal judicature. All ports and havens (2), and every arm or creek of the sea within the points of the land, where a man may see clearly from side to side, is within the body of the county (3). Offences so committed are, therefore, triable by the ordinary courts of common law. If, says Lord Hale, the nuisance occur in a county where the court of king's bench is sitting, the trial may take place by presentment there; if in any other county, the presentment may be removed by *certiorari* into the king's bench, and there proceeded in, or an information may be filed at the suit of the king in any of his courts at Westminster (4). So where the king claims and proves a right to the soil, and a *purpresture* and nuisances appear to have been committed, an information may be filed by the attorney general in a court of equity, and a decree made to abate it (5). Probably, however, if it appeared doubtful whether a nuisance has been committed or not, a court of equity would not decide the question without the in-

(1) 1 Hale de Port. Mar. p. 2. c. 7. Mich. 3 B. R. rot. 10.

(2) Godb. 261. 2 Roll. Rep. 157. 4 Inst. 148. 3 Inst. 112, &c. Hobart, 79. Moore, 756. Callis, 38.

(3) 1 Hale de Port. Mar. p. 2. c. 7. Fitz. 8 E. 2. tit. Corone.

(4) Hale de Port. Mar. p. 2. c. 7.

(5) The Atty Gen. v. Richards, 2 Anstr. 603. Bristol case, 1 Hargr. L. Tr. 81.

tervention of a jury (1). If the nuisance be not within the body of a county, but upon the high sea, it is to be rectified and redressed by the court of admiralty. (2)

2. Acts of parliament regulating ports; penalty on throwing ballast; power to raise vessels sunk.

Of the acts of parliament which have been passed for the regulation of ports, there are some which relate to the whole kingdom, and others which affect only particular ports. An act of the 46 Geo. 3. c. 153. provides that it shall not be lawful for any person to construct any pier, quay, wharf, jetty, breast, or embankment, in or adjoining to any public harbour in the united kingdom, or any river immediately communicating therewith, so far as the tide flows up the same, without giving at least one month's notice of his intention to the secretary of the admiralty, who is to lay the same before the lord high admiral or lords commissioners of the admiralty for the time being, the receipt of which notice the secretary is required duly to acknowledge, and the offender is liable to forfeit £200. It was provided, however, that this statute should not extend to affect or prejudice the rights of the corporation of London, or of the lord mayor, as conservator of the river Thames and the waters of Medway (3). The statute 54 Geo. 3. c. 159. in order to restrain the practice of throwing filth or rubbish into ports and harbours so as to obstruct navigation, provides that if the owner or master of a ship, or any person working a quarry near the sea, or any other person, shall cast, throw, empty, or unlade, either from a ship, lighter, boat, or other craft, or from the shore, any ballast, stone, slate, gravel, earth, rubbish, wreck, or filth, into any of the ports, roads, roadsteads, harbours, havens, or navigable rivers of this kingdom, so as to tend to the injury or obstruction of the navigation thereof, or in any place or situation on shore where the same are liable to be washed into the sea, or into any such ports, roadsteads, harbours, havens, or navigable rivers, either by ordinary or high tides, or by storms or land-floods; every person so offending shall for every such offence forfeit a sum not exceeding £10, over and above all expences which may have been incurred in removing to a proper distance the matters deposited in contravention of the

(1) Atty Gen. v. Richards, 2 Anstr. 615.

(2) 1 Harg. Hale de Port. Mar. p. 2. c. 7. p. 88. and see as to the jurisdiction of the admiralty, 39 G. 3. c. 37. 1 Chitty's Crim. L. 153, &c. 15 Rich. 2. c. 3. 28 Hen. 8. c. 15. but see 54 Geo. 3. c. 159. s. 22.

(3) But see case of the King v. Earl Grosvenor and others, ante, 4.

provisions of the act: provided, however, that the act should not extend to render illegal the casting out, unlading, or throwing out of any ship, lighter, boat, or other craft, any stones, rocks, bricks, lime, or other materials used in building or repairing any quay, pier, wharf, wear, bridge, or building, or the banks or sides of any port, harbour, haven, channel, or navigable river, or any materials for repairing a highway (1). It is also required, that no vessel or boat shall unlade upon any part of the shore (except on some wharf properly constructed for the purpose) any ballast or filth, except at the time of high water, or within two hours before or two hours after high water; and that for such a purpose the vessel or boat shall approach the shore as far as the tide and the draught of water will allow, and shall under no circumstances and in no situation deposit any of the matters below low-water mark at neap tides; and that every vessel drawing above eleven feet of water at the stern shall unlade all such materials into some lighter, barge, or boat, in order that they may be conveyed as near to the shore as possible at the time of high water, in the manner directed by the 54 Geo. 3. (2) Under the provisions of the statute 19 Geo. 2. c. 22., which required that no ballast or rubbish should be thrown out, except upon the land where the tide or water never runs or flows, it was holden to be an offence to unload ballast out of a ship in the river Tyne into a machine or vessel called a hopper, with intent that it should be carried out into the open seas, the ballast having been in fact afterwards carried out accordingly and discharged at a place where the water was more than 14 fathoms deep, although at a distance from any port, haven, channel, or navigable river (3). The statute 54 Geo. 3. also requires that all such ballast and other matter shall, in the cases which it previously mentioned, be cast on shore from that side of the vessel which is nearest to the land (4); and also, in order to prevent the damaging of the shores or banks of ports, harbours, or havens, that no person shall take any ballast or shingle from any shores or banks from which the commissioners for executing the office of lord high admiral should find it necessary, for the protection of such port, harbour, or haven, or the works there-

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(1) 54 Geo. 3. c. 159. s. 11. Brucklesbank v. Smith, 2 Burr. 656.

(2) 54 Geo. 3. c. 159. s. 12.

(3) Brucklesbank v. Smith, 2 Burr. 656. This seems also penal under 54 Geo. 3. c. 159. s. 11.

(4) 54 Geo. 3. c. 159. s. 13. like penalty of 10*l.* and expences. See ante, 26.

of, by order under their hands, or the hand of their secretary, and published in the London Gazette, to prohibit the removal of shingle or ballast, under a penalty of £10 (1). Provision is also made by the 54 Geo. 3. for enabling a harbour-master or commissioner of the navy, or the officers of his majesty's ships of war, docks, dockyards, and arsenals, to weigh and raise a vessel sunk or stranded, if the owner neglect to do so for the space of 28 days (2). The forfeitures under the 54 Geo. 3. may be sued for within twelve months after the perpetration of the offences, before a commissioner of the navy residing near the spot, or a justice of the peace for the adjoining district; one half of the forfeiture accruing to the informer, and the other half to the crown: three months imprisonment is the consequence of non-payment of the penalty; and the authority of the magistrate is sufficient, although the facts occurred out of his jurisdiction, or out of the body of a county. (3)

The statute 54 Geo. 3. c. 159. contains some further provisions with regard to the regulation of ports, of more extensive importance than those already noticed. It is entitled "An act for the better regulation of the several ports, harbours, roadsteads, sounds, channels, bays, and navigable rivers in the united kingdom, and of his majesty's docks, dockyards, arsenals, wharfs, moorings, and stores; and for repealing several acts passed for that purpose." It repealed so much of the statute 9 Geo. 3. c. 30. as related to the harbour moorings of the royal navy; and altogether repealed the act 51 Geo. 3. c. 73. The second section provides that it shall be lawful for the lord high admiral, or three or more of the commissioners for executing the office of lord high admiral, from time to time, as occasion shall require, to make such rules, orders, and regulations as they deem expedient for the preservation of his majesty's moorings, and for mooring, anchoring, and placing all private ships of war, transports, and other private and merchant ships, lighters, barges, boats, and other craft, in all the ports, harbours, havens, roads, roadsteads, sounds, channels, creeks, bays, and navi-

(1) 54 G. 3. c. 159. s. 14. tarpaulins to be used in taking in and discharging ballast. s. 5. provisions relative to ballast may be dispensed with by admiralty.

(2) 54 G. 3. c. 159. s. 17, 18, 19.

(3) 54 Geo. 3. c. 159. s. 20, 21, 22. action within 6 months, general issue and treble costs, s. 27. form of conviction, right of appeal, &c. s. 23, 4, 5, 6. 28.

gable rivers of the united kingdom, so far as the tide flows or reflows, where or near to which his majesty may have any docks, dockyards, arsenals, wharfs, or moorings; and harbour-masters to be appointed as therein mentioned for superintending the same, for the purpose of insuring free and safe ingress, egress, and regress to and from those ports, &c. and the docks, dockyards, arsenals, wharfs, and moorings therein; and for that purpose to order and direct such spaces along the sides of, over against, or near to such docks, dockyards, arsenals, wharfs, and moorings, as they shall judge necessary, to be kept free and open, and to cause them to be marked out by piles, buoys, or other sufficient marks; and to direct what spaces and distances shall be appropriated for the sole use of moorings for his majesty's ships of war, and hired armed vessels in his majesty's service; and to specify the distance from his majesty's docks, dockyards, arsenals, wharfs, moorings, ships, and hulks, within which no private ship of war, transport, or any other private or merchant ship or vessel, lighter, barge, boat, or other craft, shall be moored, anchored, or placed, and for other purposes mentioned in the act; and from time to time to vary such rules, orders, and regulations, as occasion shall require for these purposes; and also from time to time to appoint proper persons, to be called the king's harbour-masters, to superintend such ports, &c. for these purposes, and to enforce obedience to all such rules, orders, and regulations; all which rules, orders, and regulations must, upon their being made, and also from time to time whenever they are varied or altered, be forthwith printed and published in the London Gazette, and must also be printed and put upon pasteboard, and kept constantly hung up in some open and conspicuous part of the custom-house, or other place of public resort for business in the port, harbour, or haven for which they are made, or at which they are directed to be in force, to the intent that they may be seen and read, and copies or extracts taken, by all persons interested (1). A penalty of £10 is also imposed on the master or owner of a private vessel which fastens to his majesty's moorings (2), and a power to remove it is given (3); and if such private vessel becomes hooked by accident or otherwise, the owner must not proceed to unhook it, but must give notice to the king's officer. (4)

(1) 54 Geo. 3. c. 159. s. 2.
(2) 54 Geo. 3. c. 159. s. 3.
(3) s. 4.

(4) s. 5. places appointed for breaming ships and leaving, &c. gunpowder.

It has been recommended to the masters of trading vessels not only to pay a due attention to the regulations of ports, but also to be careful not to give offence to the military governors, or the officers on guard in garrisons. To avoid it, they should inquire what military orders are given out with respect to the harbour, and oblige their crews to observe them. As these orders vary in different places, it is not possible to enumerate them; but one instance may serve to explain the utility of the recommendation above given. Firing a musket, or even a pocket pistol, on board a ship or on shore, without leave obtained from the commanding officer, or notice given of the intention to fire it, is an offence liable to punishment by imprisonment. In the month of November, 1765, a boy on board an English collier fired at a bird flying across the bason; the officer on the quay-guard was alarmed, sent a file of soldiers on board and demanded the boy; the master concealed him, and refusing to deliver him up, was himself carried on shore, and kept in custody till the matter was compromised by the intercession of the British vice-consul. But it may happen that no such protector is on the spot, in which case great inconveniences may arise, from ignorance of the established customs in sea-ports which are garrison towns. In a word, no care or circumspection can be too great on the part of masters of trading ships, to keep themselves and their crews free from all molestation in the ports to which their cargoes are consigned (1). With respect to the right of mooring barges to wharfs in the river Thames, the custom of mooring barges at low water appears to be for one tide at the piles in the front of the wharf; and if there are no piles the custom does not allow the barges to moor at the wharf, except through distress. (2)

Besides the more general acts of parliament we have just noticed, there are various statutes peculiarly applicable to particular ports and harbours (3). Most of these contain enactments authorizing an officer called the harbour-master to arrange the stations of vessels riding in the port. Thus the Dover act, 34 Geo. 3. c. 112. s. 1. recites that it is of great consequence to the public that some further powers should be given for re-

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(1) 1 Beawes's Lex Merc. 307,8.

(2) Wyat v. Thompson, 1 Esp. Rep. 252.

(3) See the Indexes to the Statutes at large, title "Ports."

gulating that harbour, and the mooring the ships and vessels therein; and it is therefore enacted, "that the said warden and assistants, or their harbour-master for the time being, shall be authorized and empowered to order, direct, and regulate the immediate mooring or stationing of ships and vessels resorting to and coming into the harbour; and the passing and removing ships and vessels into and out of the said harbour; and the removing of any such ships and vessels from one part or bason of the said harbour, or to any other part, or to the bason of the said harbour, or from any part of the said harbour, or the inner bason thereof, into a certain place or bason communicating with the said harbour, called the Pent." But a regulation of this nature only gives the harbour-master authority to interfere in the public regulations of the harbour, and does not enable him to interfere with the private interest in a particular wharf. Thus where an action on the case was brought by the occupier of a wharf adjoining Dover harbour, for an injury to his right to have ships come to his wharf for the purpose of shipping and unshipping goods, by the defendant placing ships near to and opposite such wharf; and it appeared in evidence that the defendant was possessed of a wharf adjoining the plaintiff's, which was too narrow in front for a vessel to lie alongside the same without some part thereof extending in the frontage of the plaintiff's wharf; and that the defendant, with the leave of the harbour-master, placed his vessel partly in front of the plaintiff's wharf, and it was contended that this was legal under the before-mentioned act, 34 Geo. 3. c. 112. s. 1. But upon a motion on behalf of the defendant to enter a nonsuit, the court held (1) that the harbour-master had no power to give such permission to the defendant, to affect the private rights of another individual; and that the power given to the harbour-master is principally to regulate the terms on which ships are to go to the different wharfs, and to station the different vessels in the harbour at such places at which those vessels have a right to be stationed. For instance, if a party have a wharf of full frontage, sufficient for the length of a particular ship, and there are half-a-dozen ships all desirous of going to the wharf, the harbour-master is bound to direct which is to have the prefer-

(1) Searle and others v. Fuller, at Serjeants Inn, Hilary Term, 1820. Marryat, Gurney, and Comyn, for plaintiff; Adolphus and Chitty, for defendant.

ence, and the order in which they are to go; but if a man has merely a frontage of five yards, the proprietor of a ship has no right to require the harbour-master, nor has the latter any authority to direct such ship to be placed in front of that narrow wharf. For this reason:—that the proprietor of the narrow wharf has acquired no right to have any ship stationed at that place. The defendant, therefore, in the case alluded to, had no right to have his ship stationed in front of the plaintiff's wharf, and had no right to have any ship stationed in front of his own wharf, unless that ship was confined to the limits of that wharf over which his right extended.

## CHAP. II.

### *Of Light-houses, Beacons, and Seamarks.*

LIGHT-HOUSES, beacons, and seamarks are maintained for the direction of mariners on different parts of the British coast. A *light-house* is a tower, advantageously situated on an eminence near the sea, or at the entrance of some port or river, for the guidance of vessels in dark and tempestuous nights, by the assistance of lamps or fire burned upon the top (1). *Beacons* are also signals made by fire on some place near the sea, either for the purpose of directing vessels how to steer, or to give notice of the approach of an enemy. *Seamarks* are casual objects of a conspicuous nature which serve for the direction of such as approach the coast by day, but were either formed by nature, or designed for other purposes besides the security of navigation, as protuberances of the soil, church-steeples, castles, trees, &c. (2) At common law, the king alone could authorize the erection of light-houses, seamarks, and beacons (3). He might erect them in such manner as appeared most advantageous for shipping and navigation, and even on the land of a subject, without his consent (4). In later times, the authority was delegated by letters patent to the lord high admiral, and became vested in the lords of the admiralty (5). At the present day, the erection of light-houses and other esta- Light-houses, beacons, and seamarks.

(1) As to the successive improvements in light-houses, see 3 Anders. 624. 4 Macph. 122.

(2) 4 Inst. 148. Com. Dig. Navigation, H. Beawes' Lex Mer 1 vol. 6th ed. 308. Postl. Dict. Com. tit. Light-house. Montefiore, ib. 8 Eliz. c. 13. s. 4. as to seamarks and statutes infra, 52 G. 3. c. 39. s. 67.

(3) 4 Inst. 148. 12 Co. 13. Carter, 90. 2 Keb. 114. 3 Inst. 204. See letters patent of Q. Ann. stat. 3 Geo. 2. c. 36. 6 Geo. 3. c. 31. Trinity House v. Clark, 4 M. & S. 291.

(4) Id. ibid. and see 4 T. R. 796, 7.

(5) Id. ibid. Bac. Abr. Prerogative, B. 6.

blishments of the same nature, usually takes place under the authority of acts of parliament: the principal statute was passed in the eighth year of queen Elizabeth.

Trinity House to erect and maintain light-houses, &c.

The statute 8 Eliz. c. 13. empowers the master, wardens, and assistants of the Trinity House, at their own costs, to erect such beacons, marks, and signs for the sea, in such places on the sea-shore, and uplands near the sea coast, or forelands of the sea, as appear most proper, to prevent accidents to ships on their coming into port. Although the act does not mention light-houses, it has been held to extend to the erection of light-houses, as well as of beacons and other seamarks; to such establishments of this nature as are intended for the direction of mariners by night, as well as to those which are to serve for their guidance by day (1). The 3d section declared that all such beacons, marks, and signs so to be erected at the costs and charges of the corporation of the Trinity House, should be continued, renewed, and maintained from time to time by the same corporation. The 4th section provided, that no steeples, trees, or other things then standing, as beacons or marks for the sea, of which notice should be given before the 1st of March then next coming to the owner or occupier of the place where they stand, by the queen's letters under her signet, should at any time thereafter be taken down, under a penalty of £100, half to the queen and half to the Trinity House. And if the offender be not of the value of £100, he is to be deemed convicted of outlawry (2). A recent statute also provides, that all the clauses, penalties, and forfeitures contained in the 8th Eliz. or any other act or acts in force for the preservation of beacons, shall be construed to extend to vessels duly appointed to exhibit lights for the preservation of ships at sea, and to all persons removing, injuring, or destroying such vessels or lights, which offences may be laid and tried in any county in England (3). And every person who shall ride by, make fast to or remove, or wilfully or negligently run down or run foul of any vessel appointed to exhibit lights, or any buoy or beacon belonging to the corporation of the Trinity House of Deptford Strond, or belonging to or placed by any other corporation having lawful

Ships exhibiting lights.

(1) 4 Inst. 149. Bac. Abr. tit. Prerogative.

(2) 8 Eliz. c. 13. s. 4.

(3) 52 G. 3. c. 39. s. 67.

authority to place it, will forfeit for every offence a sum not exceeding £50, nor less than £10, together with the expence of replacing or making good the damage occasioned by such misconduct (1). The statute of Eliz. is the foundation upon which lighthouses and other establishments of a similar nature have been erected.

Concise History of Trinity-House.

The corporation alluded to, of which we deem it proper to subjoin a brief notice, is mentioned by Bishop Gibson in his additions to Cambden's Britannia, who observes, that king Henry the eighth, in the fourth year of his reign, for the advancement of commerce, established a corporation for examining, licensing, and regulating pilots, and for ordering and directing beacons, lighthouses, buoys, &c., which was styled The Corporation of the Trinity House of Deptford Strond, and which proved of great benefit for accomplishing the valuable ends of its foundation. Another society, for the like good purposes, he afterwards established at Hull, and also another at Newcastle-upon-Tyne, in the year 1537 (2); which three establishments, says Hakluyt, were in imitation of that which the emperor Charles the fifth had erected at Seville in Spain, who observing the numerous shipwrecks in the voyages to and from the West Indies, occasioned by the ignorance of seamen, established at the contractation house lectures on navigation, and a pilot major for the examination of other pilots and mariners; he also directed books to be published on that subject for the use of his mariners. The king by his charter confirmed to the Deptford Trinity House society all the ancient rights, privileges, &c. of the shipmen and mariners of England, and their several possessions at Deptford, from which it is plain that the society had existed long before (3). The corporation was confirmed in the year 1685 in the enjoyment of its privileges and possessions, by letters patent of the first year of James the second, by the name of the master, wardens, and assistants of the guild or fraternity of the most glorious and undivided Trinity, and of St. Clements, in the parish of Deptford Strond in the county of Kent. At first the corporation appears to have consisted of seamen only, but many gentry and some nobility are now made members or elder brothers of it. It is governed by a master, four wardens, eight assistants,

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(1) 52 G. 3. c. 39. s. 68. s. 32.
(2) And see 52 G. 3. c. 39. (3) 2 Anders. Com. 45.

and eighteen elder brothers; but the inferior members of the fraternity, named younger brethren, are of an unlimited number, for every master or mate expert in navigation may be admitted as such, and these serve as a continual nursery to supply the vacancies among the elder brethren, when removed by death or otherwise. Besides the power of erecting light-houses and other seamarks, in the manner we have described, on the several coasts of the kingdom for the security of navigation, to which light-houses duty is in general paid by shipping, at the rate of one halfpenny per ton (1). The master, wardens, assistants, and elder brethren are invested by charter with the following powers;—the examination of the mathematical children of Christ's Hospital; the examining of the masters of his majesty's ships; the appointment of pilots to conduct ships into and out of the river Thames; the amercement of all such as presume to act as masters of ships of war or pilots, in a pecuniary fine of 20 shillings; settling the several rates of pilotage; granting licenses to poor seamen not free of the city to row on the river Thames for their support, or when past going to sea; preventing aliens from serving on board English ships without their license, under a penalty of £5 for each offence; hearing and determining the complaints of officers and seamen in the same employ, subject to an appeal to the lords of the admiralty, or the judge of the court of admiralty. To this company belongs the ballast office for clearing and deepening the Thames, by taking up a sufficient quantity of ballast for the supply of all ships that sail out of the river, in which service 60 ships with two men each are constantly employed; and all ships that take in ballast pay them one shilling a ton, for which it is brought to the ship's sides (2). In consideration of the increase of the poor of this fraternity, the corporation is by charter empowered to purchase, in mortmain, lands, tenements, &c. to the amount of £500 *per annum*, and also to receive charitable benefactions of well-disposed persons, to the amount of £500 *per annum* clear of reprizes, There are annually relieved by this company about 3000 poor seamen, their widows and orphans, at an expence of £6000. The ancient hall at Deptford, where their meetings were formerly held, was pulled down about the year 1787, and an elegant building erected for the purpose in Lon-

(1) See the charters, 3 T. R. 769. 4 Ann. c. 20. & post.

(2) Vide ante tit. Ports. Harg. L. Tr. 6 Geo. 2. c. 29. s. 1. & post.

don, near the Tower (1). With regard to the privileges of the members of the corporation, it has been decided, that a younger brother of the Trinity House is not exempt from serving the office of headborough. This point was decided upon the construction of two charters of Charles the 2d and James the 2d. The charter of the former reign, after reciting the danger arising to vessels from shoals in the river, and that the master, wardens, and assistants of the Trinity House had covenanted to keep a certain number of lighters for removing the gravel and sand for the ballasting of ships, proceeded to state, that in order that the said service might be better performed, and that neither the said master, wardens, and assistants of the Trinity House aforesaid, and their successors, deputies, servants, or assigns, might be hindered or letted in the management of the work of ballasting ships, and cleansing the river, his majesty did strictly charge, will, require, and command all and every his officers and ministers whomsoever, and all others to whom it might appertain, that they and every of them should forbear to arrest, press, or take for the service of his majesty, his heirs, &c. or personally to *serve* in any office or place, military or *civil*, any person or persons being members of the said corporation, or any of the officers, factors, workmen, or servants, (or any the boats, lighters, or other vessels of the said master, wardens, or assistants, or their successors, deputies, or assigns, or any of them) employed or to be employed in and about the said ballasting of ships, and the said work of cleansing the river, except his majesty, or the lords of the privy council should be first acquainted therewith, and their license obtained. By the other charter, king James the second, in the first year of his reign, granted and directed that there should be for ever afterwards one master, four wardens, eight assistants, eighteen elder brethren (besides the master, wardens, and assistants) and a clerk of the guild, to be severally elected as is therein mentioned, and that all the rest of the seamen and mariners of and belonging to the said guild should be called younger brethren; and that the said

(1) 2 Adolph. 267. 2 Macph. Ann 44. 1 Beawes, Lex. Merc. 6 ed. 310. Jac. Dict. tit. Trinity House. Preamble to stat. 8 Eliz. c 13. and the stat. 52 G. 3. c. 39. s. 1, & 2. 32. 64. Post. tit. Pilots: ante, tit. Ports. Trinity House v. Clark, 4 M. & S. 288. The King v. Clarke, 2 T. R. 679 to 689. where the charters are cited and commented upon. And see Sir T. Jones, 115.

master, wardens, and assistants, or the greater part of them, together with the major part of the said elder brethren, might at all times thereafter at their will and pleasure admit, receive, and take in whatsoever person and persons, his majesty's natural subjects, who should be desirous to be of the said guild, as brothers of the said corporation, who should be called younger brothers. And the charter, after reciting that the master, wardens, and assistants being oftentimes to be employed at one hour's warning in his majesty's service at sea for the necessary defence of the realm, could not give their attendance with such diligence as their duty required, by reason that they were many times compelled to bear armour, to contribute to the charge thereof for the land service, as also to serve upon inquests and juries at assizes, sessions, courts-leet, courts-baron, before the coroner, and in all other courts, commissions, and places of jurisdictions, to the great vexation and burthen of the corporation, and to the peril of the sea-service, his majesty did will and grant that they and every of them, and all and every other brother and ministers of the same, being *mariners* and seafaring men, and their and every of their servants and apprentices, should from thenceforth be discharged and exempted from the bearing or finding of any armour to or for any land service, at or upon any general muster or other view to be taken of armour, &c. and from contributing to the setting forth of any soldiers to be employed or set forth to or for land service, other than as mariners and seamen in sea service; as also that they should be in like manner discharged and exempted from being summoned and put in assize, juries, inquests, inquisitions, attaints, and other recognizances taken or summoned within the said counties or places, or any of them; unless they the said master, wardens, and assistants, and other seamen and mariners aforesaid, should be thereunto compelled or compellable by reason of their tenures, or unless it should be for his majesty's service, at every admiralty sessions, which they should be always bound to attend upon at their peril; and moreover that they should be likewise exempted and discharged from being otherwise taxed to, for, or with any manner of land service whatsoever, other than as aforesaid, or to be contributory to the same. The question, with regard to the exemption of a younger brother from serving the office of headborough, was held to arise upon the charter of king James the second; because the charter of king Charles, which provides that no member of the corporation

shall be taken from his duty to perform an office, civil or military, does not mention younger brethren; and the only offices from which the members are exempted by the charter of James the second, are such as require personal service; but the office of headborough being exercisable by deputy, and not being mentioned by name in the charter, is not included in the exemption (1) After this brief account of the corporation of the Trinity House, we shall proceed to mention some of the prinpal light-houses..

Edystone rock, what ships to pay duties.

The Edystone rock, lying off the port of Plymouth, being very dangerous, and many ships having been in consequence cast away, the corporation of the Trinity House, in the year 1696, began a light-house upon it, and completed it in three years: a great number of masters and owners of British vessels agreeing to pay 1d. *per* ton outwards, and the like inwards, &c. for every ship passing by the light-house, except coasters, which paid only 12d. for each voyage (2). This light-house was destroyed by a violent storm in the year 1703; was afterwards rebuilt, and similar duties granted for its support to the corporation of the Trinity House, by two acts of parliament (3). Some years ago, it was again demolished by a storm, but it was afterwards restored (4). The statute 4 Ann. c. 20., which is entitled An Act for the better enabling the master, wardens, and assistants of Trinity House to rebuild the light-house on the Edystone rock, provides, that after the kindling or placing a light useful for shipping in the light-house intended to be rebuilt, there shall be paid to the master, wardens, and assistants of Trinity House of Deptford Strond, their successors and assigns, by the masters and owners of all English ships, hoys, and barks, except coasters, which pass the light-house, a duty of 1d. *per* ton outward bound, and 1d. *per* ton inward bound, one moiety by the merchant and the other by the ship-owner; and of all stranger and alien vessels that happen to pass by the light-house or beacon, the sum of 2d. for every ton burden; every coaster passing by the light-house 2s. duty for each time of passing; these duties to be collected by the agent of the

(1) The King v. Thomas Clarke, 1 T. R. 679.

(2) 4 Ann. c. 20. preamble. 2 Anders. Hist. Com. 624.

(3) 4 Ann. c. 20. 8 Ann. c. 17. Jac. Dict. tit. Light-house.

(4) 2 Macph. Ann. Com. 682.

Trinity House in the port of departure, or the port at which the ship arrives before she takes in or discharges her cargo, and to be recovered by action of debt (1). The stat. 8 Ann. c. 17. further directs, that these duties shall be paid for every vessel, as well British as alien, passing by the light-house from or to any place whatever, and shall be collected of the master in any part of the United Kingdom, and recovered in any of the courts of law (2). No cocket is to be granted until payment of the duty, and the master must produce an acquittance or light-bill, under the hand of the collector, testifying the receipt (3). The Trinity House agent is empowered to go on board the vessel to receive the duty, and the tackle or furniture may be distrained for non-payment (4). The statute 8 Ann. was passed to extend the liability to duty to vessels which touched in Ireland only; and the words inward and outward bound restrain the payment of these duties to such vessels as depart from or touch at British ports. Foreign ships sailing from one foreign port to another are clearly not liable to duty; and British ships passing by the Edystone and other light-houses in the English channel, but not touching at a place in Great Britain or Ireland, are not liable to the payment of the light-house duties (5). The legislature could not indeed have intended to impose upon our own ships, when engaged in foreign service, any burthens to which foreigners are not subject. In time of peace our transports are engaged in foreign service, to the great increase of our navigation, the encouragement of trade, and the support of our seamen; but if subject to duties to which foreigners are not, the latter would be able to let their ships at a lower rate, or the British freighter must pay the duties out of his own pocket (6). The local situation of the Edystone light-house has been described as follows. It bears from Plymouth or the entrance of the Sound south and by west; and from Ramhead south and half a point easterly; and is distant from the anchoring in the sound four leagues; and from Rampoint about three leagues and a half, this being the nearest shore to the

(1) 4 Ann. c. 20.
(2) 8 Ann. c. 17. s. 1.
(3) 8 Ann. c. 17. s. 2. See the Trinity House v. Clark, 4 M. & S. 289. 291.
(4) 8 Ann. c. 17. s. 3.
(5) The Trinity House v. Sorsbie, 3 T. R. 768. Vide also Trinity House v. Clarke, 4 M. & S. 288—291.
(6) Id. ibid.

house; and the isle of Maystone bears from the light-house about north-east, and is also four leagues distant south. All ships coming from the east or west to Plymouth have much the same advantage of the light: all the rocks near this house are on the eastwardly side, and stretching north, but most southerly, and all are covered at high water; but on the west side any ship may sail close by the house, there being 12 or 13 fathoms water, and no hidden rock; although towards the east and by north, about a quarter of a mile distant from the house, there lies one that never appears but at low spring tides, and is the more dangerous as it is little known (1). Besides the Edystone light-house, there are also similar securities for navigation at the Skerries, at Dungeness Foreland, at the Island of Portland, on the Caskett rocks near Alderney, on the Needle Point in the Isle of Wight, besides the Little Cumray light-house, and some light-houses erected for the service of private ports, as at Ilford Combe, on St. Bees Head, near Whitehaven (2). The statute 3 Geo. 2. c. 36. recites and confirms the letters patent granted by queen Anne to William Trench, esquire, for erecting a light-house upon the island or rock called Skerries, lying in the sea near Holyhead in Anglesea, provides for the maintenance of the light-house, and makes the duties granted in respect of it perpetual. This act declares that the light-house is thereby vested in Sutton Morgan, his heirs and assigns, to the intent that he may from time to time keep it in sufficient repair, and in the night season maintain a proper fire in it, so that the trade and navigation in the channel might be effectually preserved, according to the intent and meaning of the act; the duties granted by the act being subject to the expence of maintaining the light-house and fire, to the expence incurred by the act, to the payment of the debts due from Mr. Trench at the time of his death, and also the debts of Ruth Trench (3). So in the reign of Charles the second, letters patent were granted for the erection of light-houses at the sandy point called the Spurm, at the mouth of the Humber. Part of the ground at the Spurm point having been lately washed away, and other ground thrown up, so that

Skerries.

Spurm point.

(1) 1 Beawes, 6 ed. 309.

(2) 1 Beawes, 6 ed. 310. charters mentioned. Trinity House v. Sorsbie, 3 T. R. 769. Trinity House v. Clark, 4 M. & S. 288.

(3) 3 Geo. 2. c. 36. s. 8. 3 And. Hist. Comm. 164.

the light-houses stood at a considerable distance from the point, it became necessary to remove them, and a statute was passed to enable one of the proprietors to carry on the work, the others being unwilling to engage in it. The statute recites the letters patent, and contains several important provisions (1). Temporary light-houses were erected under the authority of this act by an enterprising individual; but as sufficient money could not be raised, the corporation of the Trinity-house was applied to, and another statute was passed in the 12th year of George the third, to give further power to the Trinity House with regard to the erection of the new light-houses; the property was to be retained by the corporation till the duties payable should reimburse all charges, after which it was to revert to the former proprietors (2). In the 16 Geo. 3. an act was passed for erecting light-houses and landmarks at the port of *Chester*, and for placing buoys upon the banks and shoals leading into and out of the port, for regulating pilots and other persons towing or tracking vessels to and from the city of Chester, and for fixing the rate payable (3). In the 18th year of the last reign an act was passed to enable the corporation of the Trinity House to establish and maintain a light-house on the rocks called The Smalls, in St. George's Channel. It recites the act of 8 Eliz., and letters patent of the 36th of the same queen, and enacts, that after a light is placed in a light-house on one of the rocks called The Smalls, certain duties shall be paid to the corporation of the Trinity House (4). Several statutes were also passed in the course of the late reign with regard to the erection of light-houses in the northern parts of Great Britain. (5)

Chester.

The Smalls.

Duties.

With regard to the duties payable in respect of establishments of this nature, it may be observed, in addition to what has been already stated in considering the Eddystone light-house, that in the reign of Charles 2d a case occurred, in which it was decided that an order or decree in the cinque ports for raising a tax for repairing a beacon was valid, without setting

(1) 6 Geo. 3. c. 31. 3 Macph. Com. 445. 521.
(2) 12 Geo. 3. c. 29.
(3) 16 Geo. 3. c. 61.
(4) 18 Geo. 3. c. 42. 3 Macph. Ann. 621.
(5) 26 Geo. 3. c. 101. 4 Macph. Ann. 171. 28 Geo. 3. c. 25. 29 Geo. 3. c. 52. 187.

forth that it was at the time actually in decay or out of repair, The case came on upon a certiorari directed to the mayor jurats and commonalty of the ancient town of Winchelsea in Sussex, to remove an order or decree made by them. The return stated that there had been time out of mind in Kent and Sussex five ancient towns; viz. Hastings, Sandwich, Dover, New Romney, and Hithe; and that in Sussex there are two other ancient towns called Rye and Winchelsea, which are members of the cinque ports ; that the town of Winchelsea has beenfrom time immemorial incorporated by the name of the mayor, jurats, and commonalty of Winchelsea; that all the cinque ports with their members have been from time immemorial places for ordering provision, and for the preservation of shipping belonging to the kings and queens of England for the time being; and that by reason of their situation upon or near the sea-shore, the inhabitants and residents, as well for the preservation of the said towns, as of the kingdom of England against foreign invasion, have always kept and ought to keep beacons, watch-houses, and guards, night and day, as well by sea as by land; and for the better maintenance thereof, the town of Winchelsea, in the common hall, has been used to make taxes and rates upon every occupier of house or land lying within the town or liberties, which privileges have been confirmed by Magna Charta. That on the 1st of May, 32 Car. 2. the corporation made a tax of 6d. per pound for maintaining the said beacons and watch-houses, according to a schedule annexed to the tax. The court determined that the order for the tax for repairing the beacon was valid, although it was not stated to have been actually out of repair, and the inhabitants, who were taxing themselves, could not be supposed to act unnecessarily. (1)

Duties not payable by transports, &c. in service of crown.

The liability to pay duties to the Trinity House has been lately determined by the court of King's Bench not to attach upon a person who had chartered his ship to the commissioners of the transport service, on behalf of the Crown, to be employed as a transport, it being apparent from the terms of the charter-party, and the nature of the service to be performed, that the defendant was not to be considered as owner, within the meaning of the charters granted to the corporation. This

(1) The case of the town of Winchelsea, Sir T. Raym. 448. Bac. Abr. Prerogative, B 6.

doctrine was laid down in an action of *indebitatus assumpsit* being brought by the corporation of the Deptford Trinity House for duties claimed in respect of the following lights; viz. the Goodwin lights, Owers light, Needles, Portland, Caskets, Lizard, Scilly, and Nore, and in respect of the buoys and beacons on coming up and entering the Thames. The vessel in the course of her employment as a transport under the charter-party, sailed from Deptford to Malta and other places in the Mediterranean, and returned to Deptford, from whence she again sailed to Cadiz and Gibraltar, and returned to Deptford, and had the benefit of the lights, buoys, and beacons. The argument on the part of the defendant was, first, that the Crown, during the period of the ship's employment under the charter-party, was to be considered as owner, and therefore by the several charters and patents, which with the exception of the Scilly charter imposed these duties upon the master and owner, the ship was exempt from duties, or at all events that the defendant was not liable to pay them; and secondly, that the charters, &c. or most of them, contemplated that in all the cases in which duties were to become payable, the ship was to clear outwards or report inwards, and that in this case, because the vessel neither cleared outwards nor reported inwards, the duties were not payable. It appeared from the charters that the light-house duties are imposed on the masters and owners of ships, except that the grant of king Charles the second for the Scilly lights only authorizes a reasonable allowance to be taken, without fixing any precise rate, or saying by whom it shall be paid. The buoyage and beaconage were claimed under a grant of those offices, with all accustomed fees, made to the plaintiffs by queen Eliz. in the 36th year of her reign. All the charters, except those above-mentioned of Charles the second and queen Elizabeth, contain an injunction to all officers of the customs not to give any vessel a cocquet or discharge, if they do not produce a certificate of the payment of these duties; and they also give the officers of the Trinity House a place in all the custom-houses where the collection is made. And all the charters, except the two above-mentioned, and the charter of 7 Geo. 2. for the Nore light, direct that the duties on outward-bound ships shall be paid before their clearing outwards at the custom-house. The three charters of the latest date, namely, those for the Goodwin, the Owers, and the Needles lights, except in terms ships or vessels belonging to his majesty; and it was admitted that such ships

could not be charged to the duties under any of the other grants, although they contain no express exception, such exception being implied in the case of his Majesty. It seems also clear that no distinction is to be made between vessels of which the king has a temporary ownership, and those which were built in the dockyards of the crown, if it appear that the king was the owner during the voyage for which the duties are claimed. The question therefore in the case alluded to was reduced to this point, whether the king or the defendant was the owner of the Britannia, within the meaning of the Trinity House charters, during the voyages in which the vessel was in the service of the crown; and the court, on the fair construction of the charter-party, determined that the defendant was not to be considered as owner. (1)

(1) Trinity House v. Clark, 4 M. & S. 288.

## CHAP. III.

### *Of Pilots.*

Of pilots.

THE law relating to pilots may be considered as it regards the mode of their appointment, and the obligation to employ them; their license, and the requisite qualifications; the duties they have to perform; the rates of pilotage which they may demand; the penalties that attach upon the master of a vessel for not taking a pilot on board, together with the liability incurred by reason of the absence of a pilot, or the pilot's misconduct; and lastly, the mode in which penalties are to be recovered.

Appointment of pilots, and obligation to employ them; boatmen; cinque port pilots; lists of pilots.

The name of pilot or steersman, is applied either to a particular officer serving on board a ship during the course of a voyage, and having the charge of the helm and the ship's rout, or to a person taken on board at a particular place for the purpose of conducting a ship through a river, road, or channel of difficult navigation, or from or into a port (1). The latter description is that to which, in modern practice, the meaning of the term is principally confined; and such pilots are established at various places in this country by ancient charters of incorporation, or by particular statutes (2). The most important statute is the 52 Geo. 3. c. 39. which repeals the provisions of former acts, so far as they relate to pilots appointed by the corporation of Trinity House of Deptford Stroud, or to those of the fellowship of Dover, Deal, and the Isle of Thanet. The preamble sets forth, that this corporation had enjoyed by usage for more than three centuries, as well as by grants from the crown, and under the authority of an act of the 5 Geo. 2. c. 20. the power of appointing pilots, roadsmen, or guides, to conduct vessels on the river Thames "through the North Channel, to or by

(1) Abbott on Shipp. 4 ed. 174. Beawes's Lex Merc. 6 ed. 203. Jac. Dict. tit. Pilot.

(2) See 52 Geo. 3. c. 39. pream. Abb. p. 2. c. 5.

Orfordness and round the Long Sand Head, through the Queen's Channel, or other channels, into the Downs; and from and by Orfordness, and up the North Channel, and up the rivers Thames and Medway, and the creeks and channels belonging or running into the same;" and of making such orders and constitutions as should be needful for the wholesome government of sea-faring men, and maintenance and increase of navigation, and of all sea-faring men within the river Thames. In pursuance of which powers, the corporation had from time to time appointed a sufficient number of pilots for the purposes before mentioned; that there had existed also, from time immemorial, a society or fellowship of pilots, of the Trinity House of Dover, Deal, and the Isle of Thanet, who have had the pilotage and loadmanage of all ships from these places up the rivers Thames or Medway; which society or fellowship had been confirmed by various acts of parliament for regulating the society or fellowship of pilots of Dover, Deal, and the Isle of Thanet, commonly called Cinque Port pilots (1):—notwithstanding which, many persons not having license or authority, or competent knowledge or experience, had taken upon themselves to act as pilots for conducting vessels upon those rivers, to the great endangering of the ships, their cargoes, and crews: —that the provisions of these acts had been found inadequate for the regulation of pilotage and the prevention of such mischiefs, and it was therefore necessary that further and more effectual regulations should be made for that purpose; and that all the provisions and regulations relating to the aforesaid descriptions of pilots should be repealed:—that acts of parliament had been passed for establishing separate and peculiar jurisdictions in relation to pilotage in certain ports, and on different parts of the coast of England, which by reason of their being limited had been found insufficient to answer the intended object, and it was therefore necessary that more effectual provisions should be made in relation to pilotage on the coast of England:—that the statute 48 Geo. 3. c. 104. was near expiring, and it was expedient that it should be altered and amended:—that it was also necessary, for duly enforcing the laws of quarantine, on which the health of his majesty's subjects essentially depends, that the names and places of residence of all pilots in England should be known by those whose duty it is to convey

(1) See 3 Geo. 1. c. 13. 7 Geo. 1. st. 1. c. 21. 43 Geo. 3. c. 152. 47 Geo. 3. sess. 2. c. 70.

information respecting those laws. The statute 52 Geo. 3. was therefore passed for the amendment of the law of pilots in these respects. The second section provides, with regard to their appointment, that the master, wardens, and assistants of the corporation of Trinity House of Deptford Strond, shall appoint and license, under their common seal, fit and competent persons, duly skilled as pilots, for conducting vessels sailing on the rivers Thames and Medway, and the channels, creeks, and docks adjoining, as well between Orfordness and London bridge, as from London bridge to the Downs, and from the Downs westward as far as the Isle of Wight, and in the English Channel from the Isle of Wight up to London bridge. And that the lord warden of the cinque ports and constable of Dover castle, or his lieutenant, shall appoint and license fit and competent persons, duly skilled as pilots, for conducting vessels sailing from the westward up the rivers Thames and Medway; that is to say, from Dungeness up to London bridge and Rochester bridge, and from the buoy of the brake to the westward; that is to say, from the buoy to the west end of the Owers: all which vessels, the act directs, shall be conducted and piloted by pilots so appointed and licensed, and by no other persons (1). This statute, however, expressly *excepts*, as well all colliers as also all vessels trading to Norway, to the Cattegat and Baltic, and likewise round the North Cape and into the White Sea; also all constant traders inwards from the ports between Boulogne inclusively and the Baltic, such vessels having British registers and coming up the North Channel by Orfordness; also all coasting vessels, and all Irish traders using the navigation of the Thames as coasters. This exception has been determined to embrace all coasting-vessels, and not such only as use the navigation of the river Thames (2). And pilots appointed before the passing of the 52 Geo. 3. by the Trinity House of Deptford, or the lord warden of the cinque ports, and constable of Dover castle, or his lieutenant, are allowed to pilot vessels by virtue of their pre-existing licenses, provided they conform to the regulations of the new statute (3). This statute, however, is not to be construed to defeat

(1) 52 Geo. 3. c. 39. s. 2. Law v. Hollingsworth, 7 T. R. 160. Carruthers v. Sydebotham, 4 M. & S. 81—85, &c. Vide Att. Gen. v. Case, 3 Price, 319, 320. See post, as to this obligation, and the consequences to the master or owner.

(2) Usher v. Lyon, 2 Price, 118.

(3) 52 Geo. 3. c. 39. s. 2. and see infra, and except s. 59; post, 5th division.

or abridge any grants, liberties, franchises, or privileges heretofore granted by charter or act of parliament to the pilots of the Trinity House of Kingston-upon-Hull, or the Trinity House of Newcastle-upon Tyne, or to give any authority to the Trinity House, of Deptford Strond, within any ports or districts having separate jurisdiction in matters of pilotage under any act of parliament or charter; nor to alter the provisions of acts of parliament relating to the pilots of particular ports, or the burthen of vessels navigating to or from such ports (1); nor does the act extend to prevent the master or mate of a vessel, or the owner, or part owner, residing at Dover, Deal, or the Isle of Thanet, from conducting or piloting his vessel up or down the rivers Thames or Medway, or into or out of a place within the jurisdiction of the cinque ports (2). But a master and part-owner who is not resident at either of the places mentioned in the act, cannot legally pilot his own ship up the river Thames on his return from a foreign voyage to London (3). Further, the act does not extend to prevent any vessel which is brought into a port in England, by a pilot duly licensed, from being afterwards removed in such port or ports by the master or mate, or other person belonging to the vessel and having the command of it: or if in ballast, by any other person appointed by any owner, or the master or any agent of the owner, for the purpose of entering into or going out of any dock, or for changing the moorings of the vessel (4). The court of king's bench had previously determined, in the construction of the statute 3 Geo. 1. c. 13. for regulating the pilotage of the rivers Thames and Medway, that the statute applied only to ships in the course of their navigation; and that the mate of a ship engaged in the Lisbon trade, who steered the vessel, which at the time was not quite cleared of her homeward cargo, and had a custom-house officer on board, down the river Thames, from Horsley Down New Stairs to Cherry Gardens, being about half a mile, and from thence to Fountain stairs, was not subject to the penalty; for otherwise, the station of a ship could not be changed, for the purpose of delivering or receiving goods at different wharfs, without the expence of pilotage (5). In like manner, where a ship had been conducted by a regular pilot up the river Thames to Limehouse Hole, and was left by him and afterwards moored

(1) 52 Geo. 3. c. 39. s. 32.
(2) 52 Geo. 3. c. 39. s. 33.
(3) Kembler v. Blanchard, 2 Bla. Rep. 690. 5 Burr. 2602.
(4) 52 Geo. 3. c. 39. s. 22.
(5) The King v. Lambe, 5 T. R. 76.

there, but being forced by the wind upon the mud lay four days in a bad situation, and because it became dangerous for her to remain there till the tide should ebb again, she was conducted by a waterman about a mile and a half further up the river; the court referring to its former decision, and considering the voyage in this case to have been ended, when the ship was left at Limehouse by the pilot, determined that the waterman was not subject to the penalty. (1)

The statute directed that a sufficient number of cinque-port pilots, not less than eighteen at a time, and in succession from time to time, without intermission or any unnecessary delay, should, at all seasonable times by day and night, constantly ply at sea, or be afloat between the South Foreland and Dungeness, to take charge of ships coming from the westward (2); and that proper signals should be established, to be made at signal-houses erected on commanding situations near Dover, to give notice of fleets coming from the westward; and that upon the making of signals, giving notice of the approach of a fleet from the westward, all cinque-port pilots not on duty at the time should, according to such rules and regulations, as to number, rotation, or otherwise, as might be made in that behalf, forthwith prepare to go afloat, and go off in time to fall in with such vessels, on pain of forfeiting, in case of neglect, for the first offence £20, for the second offence the delinquent is to be suspended from his office for twelve months; for the third, he is to forfeit his license to act as pilot, and to be rendered incapable of acting afterwards in that capacity (3). The master of a vessel so coming from the westward, and bound to a place in the rivers Thames or Medway, not having a duly qualified cinque-port pilot on board, is obliged, on the arrival of the vessel off Dungeness, and until she has passed the buoy of the brake, or a line to be drawn from Sandown castle to that buoy (unless in the meantime she has received a proper cinque-port pilot on board), to display and keep flying the usual signal for a pilot to come on board; and if a duly qualified cinque-port pilot be within hail or approaching, and within half a mile, with the proper distinguishing flag or vane, the master is bound, by heaving to in proper time, or shortening sail, or by all practicable

(1) The King v. Neale, 8 T.R. 241.

(2) This regulation may be suspended by order in council. 53 Geo. 3. c. 140. s. 17.

(3) 52 Geo. 3. c. 39. s. 10. 53 Geo. 3. c. 140. s. 17.

means consistent with the safety of the vessel, to facilitate the pilot's getting on board, and to give him the charge of piloting the ship. And every person in command, who does not display and keep flying the usual signal for a pilot to come on board, from the time the vessel has arrived off Dungeness, and until she has passed the buoy of the brake, in a line to be drawn from Sandown castle to the said buoy (unless in the meantime a duly qualified pilot has come on board), or who declines to take the cinque-port pilot on board, or to give the charge of his vessel to such pilot, who does not heave to, shorten sail, or otherwise facilitate the pilot's coming on board, so far as is consistent with the safety of the vessel, is liable to forfeit double the amount of the sum which would have been demandable for pilotage, and the further sum of £5 for every fifty tons of the ship's burthen; but the £5 penalty is not recoverable, unless the corporation of the Trinity House, or the lord warden for the cinque ports, or his lieutenant, shall authorize by written certificate the proceeding for the penalty. Provided that if a ship bound to the rivers Thames or Medway shall anchor any where in the Downs, between the South Foreland and a line drawn from Sandown castle and the south buoy of the brake, having on board a licensed pilot, but not a cinque-port pilot, it shall be lawful for a cinque-port pilot to repair on board her, at any time before the vessel has been at anchor one hour with the signal for a pilot flying, and to take charge of her up those rivers (1). The penalty to be paid by the master of a vessel who refuses to take a pilot on board on arriving from the westward, bound to any place in the Thames or Medway, is double the amount of the sums payable for pilotage from the place at which he is bound first to take a pilot on board to the termination of his voyage; as if a ship in her course from the West Indies come from the westward of Folkstone, bound for London, the double pilotage is to be calculated for the voyage up to Gravesend, and not merely to the Downs (2). A cinque-port pilot, taking charge of a vessel into the Thames or Medway, who quits the vessel at Gravesend or in any other part of the Thames, or in any part of the Medway, before the vessel has arrived at the place in the river to which she is bound, without the consent of the master, unless some other duly

(1) 52 Geo. 3. c. 39. s. 11.

(2) Mackie v. Landon, 6 Taunt. 256. 1 Marsh, 585. S C.

qualified pilot has been taken on board and has assumed the conduct of the ship, is liable to forfeit his pilotage, and to undergo such other penalty as may be in force against a pilot who leaves a vessel before she arrives at her place of destination (1). The statute 52 Geo. 3. c. 39. required that lists of the christian names and surnames, ages, and places of residence, of all pilots in England, should, with the dates of their appointments, on or before the 31st Dec. 1812, be transmitted to the corporation of the Deptford Trinity House, at their couft-house in London, distinguishing the limits within which the pilots were appointed to act, and thenceforward from time to time as each appointment of a pilot should take place; and also duplicates of such lists to the commissioners of the customs in England; annexing to the lists to be transmitted to the Trinity House the rates of pilotage, and also stating the rules established in relation to such light-houses, if they have been made by any authority but by act of parliament, or the corporation of the Deptford Trinity House; and that the same when so completed should be transmitted by the respective corporations and persons by whom pilots are appointed in any of the ports, harbours, or rivers, or on any of the coasts of England; and that these corporations and persons should transmit to the Trinity House corporation, at their court-house in London, annually on the 31st of December, or within one calendar month afterwards, an annual list, corrected up to the 31st of December, of the names and residences of pilots within their several jurisdictions, and stating such alterations as have been made in the rules for governing pilots within their respective districts (2). The same statute also required, with a view to the laws of the quarantine system, that the commissioners of the customs should, within one month from the 31st Dec. 1812, transmit to the principal officers of the revenue under their management at the several ports in England, the names and places of residence of such pilots in the lists so transmitted to them as shall reside within the limits of each port respectively, and so from thenceforward the name of each pilot of whose nomination they shall receive notice from the proper authority, in order that the principal officers at the several ports may be enabled to communicate to every pilot within the limits of the port respectively, all pro-

(1) 52 Geo. 3. c. 39. s. 12. Bennet v. Miota. 1 Moore's Rep. 4. 7 Taunt. 259, 260.
(2) 52 Geo. 3. c. 39. s. 64.

clamations or orders in council respecting the performance of quarantine by ships arriving from infected places. (1)

Boatmen.

It is now further required by the statute 53 Geo. 3. c. 140. that 140 *boatmen* shall be licensed by the lord warden of the cinque-ports, or the deputy lieutenant-governor of Dover castle, or such other persons as shall be from time to time especially authorized for that purpose by the lord warden within the jurisdiction of the cinque ports, for assisting *ships in distress*, and conducting them into and out of the harbours of Dover, Ramsgate, Margate, and Folkstone, and putting licensed cinque-port pilots on board of vessels coming from the westward and bound up the rivers of Thames and Medway; and that 50 of such boatmen shall constantly reside at Dover, 50 at Deal, 20 at Ramsgate, and 20 at Margate; and that all such boatmen shall be respectively required by such licenses so to reside at the respective places to be specified in their licenses, and shall upon quitting their places of residence, or neglecting to use or act under them for the space of two months, unless prevented by illness, forfeit their licenses; and that all such boatmen, previously to the licenses being granted, shall be examined as to their knowledge of the coast and their ability to conduct vessels into the Downs, and the harbours of Dover, Ramsgate, Margate, and Folkstone, by the commissioners of the lord warden of the cinque ports for settling salvage, and the other commissioners appointed by the act, at the respective places at which the boatmen apply to be licensed, at a meeting to be held for the purpose of the act, upon whose certificate the lord warden or his lieutenant, or the deputy lieutenant-governor of Dover castle, or other person duly authorized, is empowered to grant the license. (2)

2. License and qualification.

The law requires that no person shall take charge of a vessel nor in any manner act as pilot, nor receive any compensation for acting as pilot, unless he is authorized by some lawful *license*, nor until the license has been *registered* by the principal officers of the custom-house of the place at or nearest to which the pilot shall reside, nor without having his license at the time of his so acting in his personal custody, ready to be produced, and which he shall actually produce (3) to the master or other person desirous of employing him as a pilot; and further, that no

(1) 52 Geo. 3. c. 39. s. 65.
(2) 53 Geo. 3. c. 140. s. 1.
(3) Usher v. Lyon, 2 Price, 118—121, 2.

person, although duly licensed to act as pilot, shall act in that capacity out of the limits expressed in his license, or beyond the extent of his qualification (except in particular cases of pilots of a lower class acting in the absence of pilots of higher classes), on pain of forfeiting for the first offence not less than £10 nor more than £30, and for a second or subsequent offence not less than £30 nor more than £50 (1). A particular description of the pilot's person is written in or indorsed upon his license.(2)

It is lawful for a licensed pilot to supersede a person not licensed in the conduct of the vessel; and a master who continues to act himself as pilot, or who continues an unlicensed person, or a licensed person acting out of the limits for which he is qualified, after a licensed pilot has offered himself; and every person assuming or continuing in the conduct of a vessel without being duly licensed for the particular limits after a licensed pilot has offered himself, are severally liable to forfeit for each offence a sum not exceeding £50 nor less than £20 (3). But it seems that in order to affect the master with penalties under this clause, the pilot must produce his license, on his demanding to be taken on board and put in the management of the vessel, although the pilot had the license in his personal custody, and the master knew that he was invested with an official character, and refused to employ him, without requiring the license to be produced (4). The stat. 52 Geo. 3. also points out the necessary qualifications of persons who are to be licensed, as mentioned in the act. (5)

3. Duties of pilot.

The act 52 Geo. 3. in order to secure a compliance on the part of the pilot with his general authority and duty, provides, that every pilot duly licensed, who shall when disengaged or on any frivolous pretext decline to *take charge* of a vessel, unless such cause be shewn as will justify his not taking charge of her; or who shall decline, on being required by a captain of one of his majesty's ships, or by an officer of the society to which the pilot belongs, or by the master of the vessel, to come on board of her; or who declines, on being required by a commissioned officer in the navy, or a principal officer of the customs, or a per-

(1) 52 Geo. 3. c. 39. s. 46. Usher v. Lyon, 2 Price, 118. On death, license to be returned to corporation, penalty 20l. or 40s. s. 47. and see Pierce v. Hopper, 1 Strange 249.

(2) 52 Geo. 3. c. 39. s. 44.

(3) 52 Geo. 3. c. 39. s. 34.

(4) Usher v Lyon, 2 Price 118.

(5) 52 Geo. 3. c. 143. s. 5.

son interested as principal or agent on behalf of a vessel wanting a pilot, to go off to and take charge of her when it is consistent with safety to do so; or who shall exact, demand, or bargain for a larger fee or reward, or a greater price or hire for pilotage than that established by the rates or rules made upon this subject; or who shall in anywise delay going on board the vessel or taking charge of her; or who shall quit the vessel or decline the piloting thereof after he has been engaged or after going alongside, without leave of the captain of one of his majesty's ships, or of the person in command of the vessel, or before the service has been performed for which he was hired; or shall by drunkenness render himself incapable of conducting a vessel, or negligently or wilfully (1) run a vessel on shore, or lose it, or do any injury to it, or to the tackle or furniture, or shall lend his license to an unlicensed person to enable him or assist him to act or claim to act as a licensed pilot; he shall forfeit for every offence a sum not exceeding £100 nor less than £10, and shall be liable to be dismissed from being, or suspended from acting as a pilot, at the discretion of the Deptford Trinity House, or of any other person or corporation by whom the license was granted (2). A penalty not exceeding £50, nor less than £10, together with the risk of deprivation or suspension, at the discretion of the licensing authority is also incurred by every licensed pilot who shall make use of or compel a person in command of a vessel to make use of any boat, anchor, cable, hawser, or any other matter or thing for the service of a vessel, beyond what is actually necessary for its use, with intent to enhance the charge of pilotage or pilot assistance, whether he acts in this manner for the emolument of himself or of any other person (3). A penalty not exceeding £100, nor less than £20, is also incurred by any person acting as pilot, who shall wilfully and knowingly conduct or betray a vessel into danger, in a manner not already provided against by statute, or shall unnecessarily or improperly cut a cable belonging to a ship; or shall by wilful misrepresentation of circumstances, upon which the safety of the vessel appears to depend, endeavour to obtain the conduct of her. (4)

The charge of pilotage is regulated in various places by usage, or statute, and generally increases in proportion to the depth of 4. Pilotage.

(1) Also remedy by civil action, s. 31. post.

(2) 52 Geo. 3. c. 39. s. 51. As to pilot's neglect, see also post.

(3) 52 Geo. 3. c. 39. s. 52.

(4) 52 Geo. 3. c. 39. s. 53.

the water which the vessel draws (1). The stat 52 Geo. 3. contains, in a table annexed to the act, the rates or prices to be taken by a pilot licensed by the Deptford Trinity House for piloting or conducting a vessel from place to place, and prohibits the taking of any greater recompence (2). It also contains the rates to be demanded by a pilot licensed by the lord warden of the cinque-ports and constable of Dover castle or his lieutenant (3). The rates prescribed by the old stat. 3 Geo. 1. c. 13. were held applicable only to the Trinity House pilots, and not binding upon another person, who in their absence took the charge of a ship in pursuance of the provisions in the 3d section of the act (4). All sums of money that become due to any licensed pilot for pilotage, may under the new act be *recovered* from the owners or masters of ships, or from the consignees or agents of such ships, not being foreign vessels, who have paid or made themselves liable to pay any other charge for the vessel in the port of delivery, and may be levied according to the amount of the sums, in such manner as any penalties may be levied by virtue of the act, demand being made in writing 14 days at least before the levy. The act further directs, that the consignees or agents of all foreign vessels, who have paid or engaged to pay any charge whatever in relation to the ship, shall be liable to the payment of, and shall pay all sums for pilotage due to the pilots who have piloted the vessels, on proof being made within 15 days after the pilotage has been performed, on the oath of such pilot before a justice of the peace, that the same has not been paid by the captain, if payment thereof shall be demanded from such consignee within 21 days thereafter; such sums are recoverable in like manner as any penalty under £20 may be recovered by virtue of the act, and such consignees or agents of foreign ships are authorized and empowered by the act to retain in their hands, out of monies received on account of such foreign ship, or on account of the owners, so much as will be sufficient to discharge the pilotage and expences (5). The charge of pilotage under the old statutes, where the service was performed in a river within the body of a county, was held not to be recoverable by suit in the court of admiralty (6). Under a stipulation in a charter party, by the freighter of the vessel, to

(1) Abbot on Shipping, p. 2. c. 5.

(2) 52 Geo. 3. c. 39. s. 3. Table A. Each pilot pays 3 guineas a year to the corporation, s. 4.

(3) 52 Geo. 3. c. 39. s. 9.

(4) The Nelson, 6 Rob. Adm. Rep. 227.

(5) 52 Geo. 3. c. 39. s. 58.

(6) Ross v. Walker, 2 Wils. 264.

pay certain pilotage and port charges for a particular voyage, the entire sums must be paid, although only a part of the cargo is delivered; for they are not in their nature capable of apportionment (1). It is observed in Beawes, that the master of an English collier is considered by the Flemings and the Dutch to be competent to act as pilot in conducting his ship from Newcastle to their ports, and accordingly in the case of a ship freighted at Shields by a Flemish merchant at Ostend, with coals for that port, he refused to allow the charge of a pilot; the matter was referred to arbitration, the British vice-consul Mortimer being one of the arbitrators, when it appeared that the ship was driven by stress of weather into Yarmouth Roads, which are pilot's water, and a pilot offering his service, he accepted him. Had he done otherwise, he would have been answerable to the owners for the ship in case the same had been lost, and to the freighter for his coals; it was therefore decided, that the freighter was bound to allow the pilotage. Pilotage is allowed in most charterparties, but not, it is said, in those made for colliers in England (2). The charge for pilotage is not recoverable on an illegal adventure, as in respect of a voyage to an enemy's country (3); or of a martial expedition, undertaken by agreement between individuals without the sanction of any government, on the terms that those who embark in it shall receive prize money and an allotment of land (4).

5. Penalty for not taking pilot, liability to third persons on ground of absence of pilot, or not having one on board.

The *penalty* to be paid by the master of a vessel which is piloted or conducted by any person but a duly licensed pilot within limits for which pilots are appointed by lawful authority (5) is double the amount of the sum demandable for the pilotage of the vessel; and also an additional penalty of £5 for every 50 tons burthen of the vessel, if the corporation of the Trinity House of Deptford-strond (as to cases in which pilots licensed by the corporation shall be concerned), or the lord warden or his lieutenant (as to all cases in which the cinque-port pilots are concerned) shall think proper, that the person prosecuting should be at liberty to proceed for the recovery of the additional penalty, and shall certify the same in writing.

(1) Christy v. Row, 1 Taunt. 316.

(2) 1 Beawes Lex Mer. 6 ed. 203.

(3) Benjamin Franklin, 6 Rob. Adm. Rep. 350.

(4) Leander, Murray, 1 Edw. Adm. Rep. 35. Gen. Miranda's Expedition to Spanish America, 59 Geo. 3.

(5) Vide Law v. Hollingsworth. 7 T. R. 160. Att. Gen. v. Case, 3 Price, 319, 320.

But the act does not extend to subject to penalties the master of a vessel (not anchoring within the limits of a place for which pilots are appointed) who shall himself act as pilot in passing up and down the English Channel or elsewhere, in passing by any part of the coast of England in the course of a voyage, or within the limits of the port to which his ship belongs, nor being a port or place in relation to which provision had been made before the 52 Geo. 3. by act of parliament, or by charter, for the appointment of pilots; or who shall employ any person as pilot, or shall himself act as such for the conduct of his ship, so long as a duly qualified pilot shall not offer assistance nor make a signal for that purpose. Provided also, that the act shall not extend to prevent any persons from assisting a vessel in distress at any time, nor to subject such persons, or any master of a vessel employing such persons, to the penalties of the act in respect of such assistance given during distress, or under circumstances rendering it necessary for the master to avail himself of the best assistance that could be procured (1).

The statute 52 Geo. 3. c. 39. also points out in what cases the owner or master is responsible, on account of his not having a pilot on board, and ascertains the extent of such liability. It provides that no owner or master shall be answerable for any loss or damage, nor shall any ship-owner, or any consignee of goods be prevented from recovering a loss or damage upon a contract of insurance, or upon any other contract relating to the ship or cargo, by reason of no pilot being on board, unless it be proved that the want of a pilot has arisen from any refusal to take a pilot on board, or from the wilful neglect of the master in not heaving to, or using all practicable means, consistently with the safety of the vessel, for the purpose of taking on board any pilot who shall be ready and shall offer to take charge of the vessel (2). Previously to this enactment, the court of king's bench had decided that the assured could not recover on a policy where the vessel was unprovided with a pilot, although it did not appear that the loss was directly imputable to the want of skill in those who navigated the vessel (3). This decision did not proceed upon the particular effect of the pilot laws of this country, but on the ground that there was no person on board the vessel

(1) 52 Geo. 3. c. 39. s. 59. cited and commented upon, 3 Price, 319, 320.

(2) 52 Geo. 3. c. 39. s. 26.

(3) Law v. Hollingsworth, 7 T. R. 160.

competent to conduct her; but the mercantile writers state in general, that if the master of a vessel in tempestuous weather finds himself in a place reputed to be dangerous, usually denominated pilot's water, and a pilot offers to come on board, which offer he refuses to accept, the master in such a case is liable to his owners, freighters, or insurers for the damage or loss of ship and cargo, if either happen in his attempting the passage without a pilot (1). The statute 52 Geo. 3. further provides, that if the owner of a vessel shall become liable under the circumstances just mentioned (2), he shall not be responsible for such loss or damage beyond the value of the vessel and her appurtenances, and the freight due or to grow due during the voyage (3). By the value of the ship is meant the value at the time of the loss, and not at the time of the commencement of the voyage. And in calculating the value of freight due or to grow due, money actually paid in advance is to be included. (4)

No owner or master of a vessel is responsible for any loss or damage, nor is any ship-owner or any consignee of goods deprived of his remedy on a contract of insurance, or upon any other contract relating to the vessel or its cargo, by reason of the neglect, default, incompetency, or incapacity of any pilot taken on board in pursuance of the provisions of the 52 Geo. 3. (5) Nor did the act extend to deprive any person of a remedy by civil action against pilots or other persons which they would have had if the statute had not been passed (6). The master of a vessel therefore, which has a pilot on board, is not answerable for damage occasioned by the mismanagement of her, unless it be expressly proved that the injury arose from the personal misconduct of the master and his servants; and the master is not compelled, in order to absolve himself from responsibility, to prove that the damage was occasioned by the personal misconduct of the pilot (7). The protection afforded to the master on the

(1) 1 Beawes's Lex Mer. 6 ed. 203.

(2) Sect. 26. supra.

(3) 52 Geo. 3. c. 39. s. 27. and see as to owner's liability in general, 53 Geo. 3. c. 159.

(4) Wilson v. Dickson, 2 Barn. & Ald. 2.

(5) 52 Geo. 3. c. 39. s. 30.

(6) 52 Geo. 3. c. 39. s. 31. as to pilot's neglect, &c. s. 51. A list of all pilots at Trinity House, &c. s. 64.

(7) Bennet v. Moite, 7 Taunt. 258. 1 More, 4. S. C. Holt C. N. P. 359. S. C. Nicholson v. Mounsey, 15 East. 384. Stort v. Clements, Peake's Rep. 107. Carruthers v. Sydebotham, 4 M. & S. 77. but see Bowcher v. Noidstrom, 1 Taunt. 568.

ground of the pilot's superintendance extends not only to injuries done on board the vessel, but also to damage occasioned to other vessels (1). It extends also to an injury done to a king's ship, as well as to the vessel of an ordinary person (2); but the clause which removes the burthen from the master or owner to the pilot, like most of the provisions of the 52 Geo. 3., is confined to the pilots of particular districts (3). The court of exchequer therefore, in a late case, determined that the owners of a merchant vessel which run foul of and damaged a king's ship lying in the Mersey, were liable in an information for damages in the nature of an action on the case, although she had a licensed pilot on board at the time of the accident; and the reason assigned for this determination was, that the Liverpool pilot act is not either of itself or by reference to the 52 Geo. 3. imperative, compulsory, or penal with regard to the captain's taking a pilot on board whilst lying at anchor, but merely subjects himself to the payment of the pilot's regulated allowance on refusal (4). However, the court of king's bench has determined that the misconduct of a Liverpool pilot appointed under the statute 37 Geo. 3. c. 78. is not to be considered as so far identified with the acts of the owner and master as to prevent the insured from recovering against an underwriter an average loss upon a damage by stranding occasioned by the neglect of such pilot (5).

All penalties imposed by the stat. 52 Geo. 3. or by any by-law made under its authority, not exceeding £20, or in respect of which the prosecutor shall proceed for £20 only, with the assent of the corporation of the Trinity House, or the warden of the cinque-ports are recoverable by prosecution before a justice within six months (6), and penalties above £20. by action of debt in any of the courts of record at Westminster, to be commenced within 12 months (7); but if it shall be made to appear as soon after as the circumstances of the case will admit, that the commencement of the prosecution has been delayed by reason of the absence of any party or parties, whether offending or complaining, or of any necessary witness, then upon such cir-

(1) Ritchie v. Bowsfield, 7 Taunt. 309.

(2) See Att. Gen. v. Case, 3 Price, 317, 8.

(3) Att. Gen. v. Case, 3 Price, 302. 320, 1; but see Carruthers v. Sydebotham, 4 M. & S. 77, &c.

(4) Att. Gen. v. Case, 3 Price, 302. Liverpool act, 37 Geo. 3. c. 78. sed vide Carruthers v. Sydebotham, 4 M. & S. 81—85, &c.

(5) Carruthers v. Sydebotham, 4 M. & S. 77.

(6) 52 G. 3. c. 39. s. 71.

(7) 52 G. 3. c. 39. s. 72.

cumstances being stated by affidavit made before a judge of one of the courts of record at Westminster, such judge may order or authorize the commencement of the prosecution within such further time as he shall think fit to limit (1). The act 52 Geo. 3. does not however extend to affect or impair the jurisdiction of the court of loadmanage or high court of admiralty (2), nor (in general) any separate jurisdictions or establishments. (3)

(1) 52 Geo. 3. c. 39. s. 72.

(2) 52 Geo. 3. c. 39. s. 73.

(3) 52 Geo. 3. c. 39. s 32. Abbott on Shipping, 4 ed. 179.

## CHAP. IV.

### *Of Quarantine.*

WE will now proceed to consider in what manner and to what extent the commerce of this country is affected by the regulations of the *quarantine* system. In treating of these laws it is proposed to enquire in the first place into their expediency and necessity; secondly, to explain the word quarantine and the other technical terms connected with the performance thereof; thirdly, to notice the existing regulations of quarantine, the authority under which it is performed, the mode of performing it, the duty of the master and pilot, the penalties that attach on leaving the vessel, the officers entrusted with the execution of the laws relating to quarantine, the places of performing it, the quarantine duties, the mode of recovering forfeitures and penalties, the legal effect of the performance of quarantine upon the contracts between individuals, and the practical inconveniences which result from it to the merchant and the ship-owner, and ultimately to the community.

Necessity and Expediency of Quarantine.

Much contrariety of opinion has at various times existed in regard to the contagious nature of some diseases which very extensively afflict mankind: in particular, the received doctrine, that the plague is a contagious disease, liable to be brought from infected countries, and propagated by means of persons or merchandize, has been questioned in some recent publications, and by medical gentlemen of distinguished ability and knowledge (1). As the quarantine laws, which are founded on the received doctrine of contagion, impose some of the most severe and heavy restraints to which the commerce of Great Britain is subjected, the doubts entertained of the validity of that doctrine,

(1) Dr. Maclean's Results of an Investigation, &c. 2 vols. 8vo., and his Pamphlet printed in the Pamphleteer, No. 20, page 147; and Dr. Mitchell's Tract and Evidence before the House of Commons, in the Report, 14th June 1819, page 83, et seq.

strengthened by some circumstances which had recently transpired in evidence before a committee of the House of Commons, justly merited the attention of the legislature. Accordingly, in the commencement of the year 1819, a Select Committee of the House of Commons was appointed "to consider the validity of the doctrine of contagion in the plague; and to report their observations thereupon, with the minutes of the evidence taken before them, to the House."

The Committee availed themselves of the evidence of a number of medical gentlemen "whose practical experience or general knowledge of the subject appeared to the Committee most likely to furnish the means of acquiring the most satisfactory information," and they had "also the evidence of a number of persons whose residence in infected countries, or whose commercial or official employments, enabled them to communicate information as to the facts, and on the principle and efficacy of the laws of quarantine." In the short report the committee drew up on the conclusion of the enquiry delegated to them, it appears, although they abstained from giving any opinion on the nature and application of the quarantine laws, that they decided in favour of the validity of the principles on which the regulations were adopted.

At present, therefore, any alteration in the quarantine laws and the regulations which so heavily affect the mercantile interests of the country is not to be expected: and it might suffice, in a work professedly treating on matters of existing law, to have simply introduced the short report of the committee, prefixed to the minutes of evidence, as preliminary to the consideration of the quarantine laws. But, induced, by motives of curiosity, as well as the importance of the subject, to peruse the minutes of evidence, it has appeared to me, that in many respects the evidence has a bearing on the question of a very different complexion to what the report is calculated to give; and it is material to add, that a difference of opinion, as to the import of the evidence, was likewise entertained by the able and intelligent chairman of the committee, Sir John Jackson Bart., who with an indefatigable zeal and industry superintended the enquiry throughout. For, in presenting, in his place in the house, the result of the labours of the committee, it appears that he had refused to concur in their sentiments; and after commenting very fully on the evidence,

dence, and shewing its result, he protested strenuously against the report being adopted.

It is foreign to my intention to enter into any analysis of the minutes of the evidence, but there are some circumstances which weigh so much in support of an opinion adverse to the report, that I shall take leave slightly to notice them. First, then, the report assumes the authority of all the medical men examined, with the exception of two, for distinguishing the plague from other epidemics, by its being of a contagious and infectious nature, and communicable by contact *only*; whereas, on referring to the evidence, it will be seen that this criterion of *contact*, which would go at once to establish the plague to be a specific contagious disease, and different in that respect from epidemic fever, is confined as much as I can discover to the evidence of but three or four (1) out of nineteen medical gentlemen examined, and many of these, moreover, do not seem disposed to apprehend more risk of infection from contiguity, and the atmosphere of a sick chamber, than from the above assumed *sine quâ non* of actual contact. Secondly, although by far the majority of the medical men examined are in favour of the received doctrine of the contagious or infectious nature of the plague, yet it clearly appears that the disorder is so much modified by atmospheric influence, and by the manners, customs, and circumstances of the place where it occurs, that strong doubts are very generally entertained by them, whether under any circumstances the disease could be received and propagated in the climate of Great Britain. One gentleman very facetiously remarks that a sea voyage does not agree with the plague, and believes it would die a natural death before it got round Cape Finisterre (2). It adds much to the force of these doubts and opinions, that it is clearly established by the custom-house returns (3), that notwithstanding our very frequent intercourse with the Levant and infected countries, and notwithstanding the notoriety that the quarantine laws have been frequently eluded, and that parcels of goods are abstracted from on board ships and smuggled ashore before undergoing expurgation, there has occurred no instance, ever since the first establishment of quarantine, upwards of 100 years, of the plague being found on board any ship, or of any person employed in the lazarettos

(1) Dr. Granville, Dr. Faulkner, Dr. Pym, Sir J. M'Gregor.

(2) Dr. M'Leod, p. 42.

(3) Appendix, Report, No. 3. pp. 101, 102.

being infected. Neither does any thing appear on the face of the evidence from which we could infer that the last great plague which visited London in 1665-6, was the Levant plague. The conjecture of some four or five of the medical gentlemen favouring the doctrine of contagion, as to its being imported, is rebutted by other medical contagionists, who concur in the opinion of the anti-contagionists as to its having been generated at home (under perhaps some diseased constitution of the atmosphere) from the narrowness of the streets, the crowded state of inhabitants, the accumulation of filth, the want of common sewers and drains, a deficiency in the supply of water, &c. such as existed in London previous to the great fire (1); since which time it is an undisputed fact that not one case of plague has occurred in Great Britain. Thirdly, many very striking examples came out here and there in the evidence (2), of communication with people ill of the plague, where even the sores had been handled, and patients had been slept with, without the disease having been communicated. These instances at least countervail others, where, in places in which the disorder was prevalent, its communication from contiguity of situation was inferred: and the knowledge that the Turks make no scruple in wearing the clothes of their relatives deceased of the plague, and that the bedding and clothes of those who die in the pest-houses, as well as of strangers, which are the perquisites of the pashas or governors, are annually sold at the public bazaars, also afford an answer to the accounts, some of them absurd enough (3),

(1) Dr. Maclean. Dr. Foster, p 15. Dr. Gladstone, p. 24. Dr. Curry, p. 64. Dr. Mitchell.

(2) Dr. Maclean. Dr. Gladstone. John Green, Esq. Dr. Tainsh. Sir R. Wilson.

(3) Shaking an old feather-bed thrown aside seven years before, it has been idly supposed raised a plague which carried off 5,900. To this absurd story may be added the following, to which many have given credit. By twenty-five soldiers, one after another, putting on an old leathern coat, 10,000 persons perished from plague. Some cords used in burying the dead twenty years before, caused the death by plague of 10,000 people. The plague overspread Paris in consequence of a workman removing from the walls of a house, where they had remained several years, some clothes fouled with the blood and matter of plague sores. A young man was seized with the plague by thrusting his hand into an old trunk, where a spider's web instantly caused a plague sore. One person was seized with the plague from holding a bit of thread: another dropped down dead by standing on a Turkey carpet. A lady smelling at a Turkey handkerchief died on the spot. Some children playing on clothes laid out to the sun caught the plague, and all perished.

of the introduction of the plague into various places, and its subsequent propagation. I shall conclude these preliminary observations on the necessity and expediency of quarantine, by earnestly recommending to those interested in the subject a perusal of the evidence, which concentrates many valuable facts, and will lay the foundation of future enquiry: and I would particularly solicit attention to the full and able evidence of Drs. Maclean and Mitchell, who mainly oppose the doctrine of contagion, and endeavour to shew that the disorder is dependant on localities and climate and atmospheric influence, like other epidemic fevers.

Definition of the terms Quarantine and Bill of Health.

The term *quarantine*, or as it was anciently written quarentine, is derived from the French word *quarante*, which signifies forty. A vessel which is obliged to perform quarantine on account of its having come from an infected place, or being likely to communicate an infectious disorder, is detained in a state of exclusion from society for a space of time in general amounting to 40 days; and although the period of detention is sometimes greater and sometimes less than forty days, (a duration of time which was perhaps originally taken from the Scriptures, and is known to the law for other purposes besides those which we are now considering) (1), the term quarantine is retained as the general denomination of the ceremonies which the suspected vessel is liable to perform. The principal document from which the quarantine officers are enabled to ascertain whether a vessel is liable to perform quarantine, or what is to be the duration of the ceremony, is termed *a bill of health*. This instrument is a certificate from the consul at the foreign port, notifying the state of the country from which the vessel sailed. A *clean* bill purports that at the time of sailing the infectious disorder did not exist. A *suspected* bill, commonly called a touched patent or bill, imports that there were rumours of an infectious disorder, but that it had not actually appeared. A *foul* bill, or the absence of clean bills, imports that the place was infected when the vessel sailed. In the Lex Mercatoria of Beawes, forms are given of the bill of health in this country: and also of one

(1) As to the widow's quarantine in dower, see Com. Dig. tit. Dower, A. 11. Co. Lit. 32 b. Jac. Dic. Quarantine. At the deluge the rain continued 40 days and 40 nights, and the same period became afterwards sacred. Gen. vii. 4. Deut. ix. 9, 11. 1 Kings, xix. 8. Matth. iv. 2 Jonah, iii. 3. Gen. vi. 3.

adopted at Alicant in Spain, from which the nature and contents of this document will be clearly seen. (1)

What Vessels are liable to Quarantine.

The liability to perform quarantine, and the method of performing it, are regulated by orders of the king in council, under the authority of acts of parliament. The statute 45 Geo. 3. c. 10., which was passed on account of the insufficiency of the former laws upon this subject (2), declares that all vessels coming from or having touched at a place from which his Majesty in council has declared it probable that the plague or any other infectious disorder may be brought; and all vessels and boats receiving any person, goods, packets, packages, baggage, wearing apparel, books, letters, or any other article whatever from any vessels so coming from or having touched at such infected place as aforesaid, whether such persons, goods, &c. shall have come or been brought in such vessels, or such persons shall have gone or articles have been put on board the same, either before or after the arrival of such vessels at any place in Great Britain, or the islands of Guernsey, Jersey, Alderney, Sark or Man, and whether such vessels were or were not bound to any place in Great Britain, or the islands aforesaid; and all persons, goods, or any other articles whatever, on board of any such vessels so coming from or having touched at such infected place, or on board of any such receiving vessels or boats as aforesaid, shall be considered to be liable to quarantine within the meaning of that statute, and of any order made by his majesty in council, from the time of the departure of such vessels from such infected place, or from the time when the persons or property have been received on board; and all such vessels and boats, and all persons (as well pilots as others) and all property, whether coming or brought in such vessels or boats from such infected place, or going or being put on board the same, either before or after the arrival of such vessels or boats at any place in Great Britain, or the islands aforesaid, and all persons, goods, and other articles as aforesaid, on board any such receiving vessel or boat, shall upon their arrival at any such place be obliged to perform quarantine in such place or places, for such time and in such manner as shall from time to time be directed by his majesty, by his order or orders in council, notified by proclamation, or pub-

(1) See forms, post Appendix. 1 Beawes' Lex Merc. 391. Pamphleteer, No. 20, p. 467.

(2) Section 9 repeals all former acts, except as to by-gone duties and penalties.

lished in the London Gazette: and until such vessels and boats, persons, goods, and other articles, shall have respectively performed and shall be duly discharged from such quarantine, no such person, goods, or other articles shall, either before or after the arrival of such vessels or boats at any place in Great Britain or the islands aforesaid, come or be brought on shore, or go or be put on board any other vessel or boat in order to come or be brought on shore in any such place, although the vessels so coming from any infected place may not be bound to any place in Great Britain, or the islands aforesaid, unless in such manner and in such cases and by such license as shall be directed or permitted by such order or orders made by his majesty in council: and all vessels and boats, whether coming from the infected place, or being otherwise liable to quarantine, and all persons (as well pilots as others), goods and other articles as aforesaid, whether brought in such vessels or boats, or going or being put on board, either before or after the arrival of such vessels or boats at any place in Great Britain, or the islands aforesaid, and although such vessels or boats are bound to any place in Great Britain or the British islands; and all commanders or masters of vessels or boats, whether coming from any infected place, or being otherwise liable to quarantine, are subject to the regulations contained in the act of parliament, or orders of his majesty in council concerning quarantine, and to all the penalties attached to the disobedience thereof. It is also declared by statute that all goods particularly specified in any order made by the king in council concerning quarantine, imported into this country from abroad, together with the vessels in which the same are brought, and also all vessels which arrive from any place whatever, under alarming or suspicious circumstances as to infection, shall be subject to such regulations as his majesty in council shall think fit to order (1). The orders in council, which will be found in the Appendix at the end of this work, contain very copious directions with regard to the performance of quarantine. A brief account of them is subjoined, for the purpose of making the reader acquainted with their general import and effect. An order in council of the 5th of April 1805 declares that his majesty doth adjudge it probable that the plague or some other infectious disease highly dangerous to the health of his subjects may be brought into Great

Summary of the orders in council.

(1) 45 Geo. 3. c. 10. s. 11.

Britain, or the islands in the English channel, by vessels coming from or through the Mediterranean, or from the West Barbary on the Atlantic Ocean, with or without clean bills of health, and also by the importation into Great Britain, or those islands, of goods enumerated in the order, of the growth, produce, or manufacture of Turkey, or a place in Africa within the streights of Gibraltar, from any place in Europe without the Streights, or on the continent of America at which there is not a regular establishment for the performance of quarantine, declared sufficient for that purpose by order in council. The order in council proceeds to specify what vessels shall perform quarantine; at what places vessels with clean bills of health shall perform quarantine, and where the goods shall be opened and aired; at what places vessels *without* clean bills of health shall perform quarantine; where vessels having goods of the growth of Turkey, or any place in Africa within the Streights of Gibraltar, or in the west of Barbary on the Atlantic Ocean, shall perform quarantine. It also permits vessels passing the quarantine station, either from ignorance or foul weather, to perform the same at any other place appointed for quarantine; gives directions as to ships liable to quarantine touching at any port in Great Britain, not being bound thither; and sets out the questions to be put pursuant to the 18th section of the before-mentioned act; and if such vessel shall be liable to quarantine, requires the master to repair to the appointed place. It also sets out the questions to be put when the vessel arrives at her station; the masters are to make oath to answers, and to repair to the station and perform quarantine, carrying with him his log-book, manifest, and ship's papers (having been first fumigated), and shall make oath to the truth of the contents of the same. Vessels arriving under suspicious circumstances may be ordered to a station distant from other vessels, and put under special guard to prevent all communication. It also directs how vessels with clean bills shall perform quarantine; that quarantine guardians shall be put on board; also under what regulations and with what precaution communication may be had between persons under quarantine and others, by letter. It regulates the night watch and centinels at the quarantine stations, and directs the providing of necessaries for persons under quarantine. It also provides that nothing shall, without order, be delivered from on board vessels under quarantine, nor conveyed from one vessel to another, nor personal intercourse permitted between them; that after the discharge of cargoes into the lazaret, the holds and

between decks shall be swept, and the sweepings burnt; that search shall be made in the lockers, chests, and repositories of the officers and crew, and such places shall be daily opened and aired; and that a daily report shall be made of the state of health of the persons on board, and the compliance with the regulations. It also gives directions as to persons falling sick on board, and patients under suspicious circumstances, and as to the mode of removing persons on the disorder discovering itself, and under what regulations persons, requiring it, may have medical assistance from on shore; and that all medical persons communicating by contact with the sick, shall perform quarantine; also under what restrictions and regulations, and how soon the pilot may leave the ship; it also allows persons desirous of it, under certain restrictions, to perform quarantine for 30 days in a separate vessel at their own expence; it also requires the quarantine of any ship, in case of any pestilential accident, to re-commence, the sick being removed to the hospital ship or pest-house. All persons performing quarantine in the lazaret at Chetney-Hill shall perform it for the same time and in the same manner as those who perform in such separate vessels. The baggage, wearing apparel, and every other article belonging to persons on board, to be sent to the lazaret at Chetney-Hill to be aired, and the persons, their clothes, &c. to be fumigated before discharge from quarantine. It also directs when the airing shall commence, and in what manner it shall be done; also the articles to be removed, and the mode of expurgation; also when, after the removal of such goods, the quarantine shall commence, and how long it shall last, when and under what regulations dried fruits, grain, seeds, &c. may be delivered; the time when the quarantine is to be computed from in certain cases, and in other cases; and directs that vessels arriving with suspected bills shall be treated as vessels without clean bills, except as to ten days less performance of quarantine. Also gives directions as to vessels coming from certain places where is no regular establishment for quarantine; requiring a declaration whether the cargo is the produce of such place, and if not, the bill of health of the ship having brought the same to such place; and such vessel shall not be liable to perform quarantine. It also directs what quarantine vessels and their cargoes, from the Mediterranean, shall perform, having been under quarantine at Malta, &c.; also that an abstract of such quarantine regulations as thought necessary shall be given to masters of vessels clearing outwards, to be placed up in the same con-

spicuously until its return, if within twelve months; and requires such masters to take the quarantine signals out with them; also requires his majesty's ships of war, meeting a vessel, to prevent the landing of goods until its arrival at the place of quarantine; and that the officers shall use their utmost care to enforce the due observance of the quarantine regulations; and lastly, that all commanders of ships of war, forts, &c., and all justices of the peace, mayors, bailiffs, &c. shall assist in bringing vessels liable to quarantine to the places appointed for the performance thereof. Such is a brief outline of the leading provisions of the orders in council. For a more particular account of them, the reader is referred to the Appendix at the end of this work.

A particular provision has been made, with regard to vessels coming from the West Indies with the yellow fever, by the statute 46 Geo. 3. c. 98. which enacts that it shall be lawful for his majesty by his order in council, or for the members of the privy council, or any three or more of them, by their order, from time to time, as often as they see reason to apprehend that the yellow fever or other highly infectious disorder prevails in America or the West Indies, to require every vessel coming from those parts to come to anchor at places appointed by the commissioners of customs, in order that the state of health of the crew may be ascertained before the vessel comes to port; but such a ship is not to be deemed liable to perform quarantine, unless that restraint be particularly imposed upon it. (1)

Special cases of infection in or near Great Britain; relaxations of quarantine laws; and security to be given before departure of vessel when plague in Great Britain, &c.

The orders made by the king in council concerning the performance of quarantine are in general either notified by royal proclamation, or published in the London Gazette (2). Other orders also, which are not published in this manner, are occasionally issued by the privy council, to enforce the performance of quarantine in instances to which pre-existing orders do not extend, or to relax their operation when a less degree of rigour becomes expedient. The statute 45 Geo. 3., in providing for circumstances of this nature, declares that it shall be lawful for his majesty's privy council to make such order as they shall deem necessary upon any unforeseen emergency, or in any par-

(1) 46 Geo. 3. c. 98. s. 6.

(2) 45 Geo. 3. c. 10 s. 33. See the orders in the Appendix.

ticular case, with respect to a vessel arriving with an infectious disease, or on board of which an infectious disease has appeared in the course of the voyage, or arriving under any other alarming or suspicious circumstances as to infection, although the vessel has not come from a place from which his majesty in council has declared it probable that an infectious disorder may be brought; or, in the event of an infectious disease appearing *in Great Britain* or the British islands, to make such orders and give such directions, in order to cut off all communication between any persons infected with such disease and the rest of his majesty's subjects, as they shall think necessary. The privy council is also empowered to make such orders as shall be deemed expedient for *shortening* the time of quarantine to be performed by particular vessels, or particular persons or goods, or for wholly *releasing* particular vessels, or particular persons or goods, from quarantine, absolutely or conditionally, and generally to *mitigate* the strict performance of quarantine in particular cases, as special circumstances shall appear in their judgment to require; and an order of the privy council so made will be as effectual as any order of his majesty in council, notified by proclamation or published in the London Gazette (1). If it should at any time happen that any part of Great Britain or Ireland, or of the islands of Guernsey, Jersey, Alderney, Sark, or Man, or of France, Spain, Portugal, or the Low Countries, is visited with an infectious disorder, his majesty is empowered to issue his proclamation to prohibit all small boats and vessels under the burthen of 20 tons from sailing out of Great Britain, or of Guernsey, Jersey, Alderney, Sark, or Man, until *security* be first given by the master to the satisfaction of the principal officer of the customs, or the chief magistrate of the port, by bond to the king, with sufficient sureties, in the penalty of £300; conditioned that it shall not touch at any place to be mentioned for that purpose in the proclamation; and that neither the master, nor any mariner or passenger, shall go on board of any other vessel at sea; and also that the master shall not allow any persons to come on board the vessel at sea from any other ship, and shall not receive any goods on board out of any other vessel. In default of the requisite security being given, the ship and her tackle are forfeited to the crown; and the master, as well as every mariner, is liable to a penalty of £20. (2)

(1) 45 Geo. 3. c. 10. s. 12. (2) 45 Geo. 3. c. 10. s. 32.

Duty of the master and pilot.

The *master* of the vessel is obliged, whenever he meets another ship at sea, or arrives within four leagues of the coast, to hoist signals, to notify that he is liable to the performance of quarantine (1). A failure of his duty in this respect exposes him to a penalty of £200; and a penalty to the same amount is also incurred by hoisting the quarantine flag on a ship not liable to perform quarantine (2). A particular signal is directed to be used on board of vessels having clean bills of health (3); a different one by vessels which are unprovided with these documents (4); and a third species of signal by vessels having the plague or other infectious distemper actually on board (5). On the arrival of a vessel from foreign parts, the master is bound to deliver to the pilot a written paper, containing a true account of the places at which the vessel has loaded or touched on the homeward voyage, under a penalty of £200. The pilot is bound, under a penalty of £50, to give notice to the master of the liability to perform quarantine, and thereupon the master is to hoist the appropriate signal (6). A pilot who conducts a vessel liable to perform quarantine into a place not specially appointed for its reception, is liable to a penalty of £100 (7). The master of the vessel is also bound before he enters the port, under a penalty of £200, to give a true answer in writing, or otherwise, and upon oath or not upon oath, according as he shall be required by the superintendant or his assistant, or other officer of the customs, to all such questions as shall be put to him in pursuance of the directions of any order in council (8). And any pilot or master of a vessel, whether liable to perform quarantine or not, who neglects to bring to according to the requisition of the quarantine officer, is liable to forfeit £100 (9). In the case of The King v. Morgan, which was tried at the Gloucester summer assizes, 1814, the pilot of a vessel which had arrived from Oporto was convicted in a penalty of £100, for having refused to bring to, on the application of the quarantine officer, in going up the river Severn towards Gloucester; and though it appeared that the vessel had been lying to a little lower down in the river, and the particular place where the order

(1) 45 Geo. 3. c. 10. s. 14.
(2) 45 Geo. 3. c. 10. s. 15.
(3) For the definition of these documents, see ante, 66.
(4) Id. ibid.
(5) 46 Geo. 3. c. 98. s. 1.
(6) 45 Geo. 3. c. 10. s. 16.
(7) 45 Geo. 3. c. 10. s. 17. See ante, 47, 8.
(8) 45 Geo. 3. c. 10. s. 18. See also 46 Geo. 3. c. 98. s. 9.
(9) 46 Geo. 3. c. 98. s. 3.

was given was such that it could not be immediately complied with; and though the officer went on board, examined the papers, and ascertained that the vessel did not require to be put under quarantine; yet the court held that the defendant was not excused by these circumstances, but that he was bound to bring to as soon after receiving the order as was compatible with a due regard to the safety of the vessel (1). If upon the examination it should appear that the vessel is liable to perform quarantine, and that the port at which it arrives, or into which it attempts to enter, is not appropriated for its reception, the officers of his majesty's ships of war, as well as the officers of the king's forts or garrisons, and all other persons in their assistance, are required to oblige the ship to repair to the appointed place, and to use the necessary means for that purpose, by firing upon it, or by any other kind of force. And if the vessel comes from or has touched at an infected place, or has an infected person on board, and a master acquainted with either of these circumstances omits to make the necessary disclosure, or wilfully omits to hoist the appropriate signal to denote that his vessel is liable to perform quarantine, he will be guilty of *felony*, without benefit of clergy (2). The master is also required by law, immediately after his arrival at the place appointed for the performance of quarantine, to deliver his *bill of health* and manifest, together with his log-book and journal; a demand of which documents is made by the quarantine officer (3). The importance of the bill of health, which is a certificate from the consul at the foreign port, consists in his notifying the state of the country from which the vessel sailed. When a vessel which has performed quarantine in a foreign lazaret arrives in this country with a *clean* bill of health, no goods are allowed to be landed, or moved in order to be landed; but the master immediately upon his arrival must give *notice* thereof, and of the foreign port at which the vessel has performed quarantine, to the principal officer of the customs, in order that the directions of the privy council may be obtained upon the subject; and a penalty of £200 attaches on the violation of this enactment. (4)

Goods not to be shipped from Vessel liable to Quarantine.

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(1) Pope, tit. 7. r. 17. note c. 46 Geo. 3. c. 98. s. 3.

(2) 45 Geo. 3. c. 10. s. 19. and see s. 41. as to mode of arrest by judge's warrant; regulations of proceedings; and sec. 24. as to seizing persons having quitted vessels. Other felonies, s. 13. 26, 27. 30, 31.

(3) 45 Geo. 3. c. 10. s. 20. Penalty 100*l*. for wilful neglect. See for the definition and use of the bills of health, ante, 66.

(4) 45 Geo. 3. c. 10. s. 22.

**Penalty on quitting the ship.**

Heavy penalties are also incurred by leaving the vessel before quarantine has been performed; by not bringing the ship to the proper station; by frequenting the stations appointed for performing quarantine, and returning from them without undergoing the compurgatory process. The statute 45 Geo. 3. enacts, that if the master of a ship which is liable to perform quarantine, and on board of which the infectious disorder has not then appeared, shall himself quit the vessel, or shall knowingly suffer any seaman or passenger to depart from it, by going on shore or by going on board any other vesssel, before the quarantine is fully performed, except in such cases and by such proper licence as shall be directed and granted by the orders in council, he shall forfeit £500; and the same penalty attaches on the master, if he neglect to cause the ship and lading to be conveyed within a convenient time after notice into the places appointed for performing quarantine (1). And every person arriving in a vessel which is liable to perform quarantine, as well every pilot or other person going on board, either before or after the arrival of the ship at a place in this country, who presumes either before or after such arrival to depart from it by going on shore in any place in this country, or by going on board any other vessel with intent to go on shore, before the vessel is regularly discharged from the performance of quarantine, may be compelled by any person whatever, and by every kind of necessary force, to return on board the vessel; and every pilot or other person so quitting the ship is liable to six months imprisonment, and a pecuniary penalty of £200 (2). The old quarantine act, 26 Geo. 2. c. 6. s. 5. which imposed penalties on the master, seamen, passengers, and other persons who quitted the vessel before the time for performing quarantine expired, was held not to extend to a pilot who went on board a vessel under quarantine and left it before the appointed time (3); but the pilot is included in the statute 45 Geo. 3. c. 10. His majesty is also empowered by the statute 46 Geo. 3. c. 98. to prohibit by order in council all persons from going within the limits of a station appointed for the performance of quarantine by vessels arriving without clean bills of health; and every offender is liable to forfeit £500 (4). All persons liable to perform quarantine, and others having had any intercourse or communication with them, whether in ships or in a lazaret, or elsewhere, are subject

(1) 45 Geo. 3. c. 10. s. 21.
(2) 45 Geo. 3. c. 10. s. 21.
(3) Harris's case, 2 Leach, 551.
(4) 46 Geo. 3. c. 98. s. 7.

to the orders of the quarantine officers and officers of the customs, who are empowered to enforce all necessary obedience to their directions; to compel persons to repair to the appointed place, and the goods to be conveyed thither:—every person neglecting to repair accordingly to the lazaret, or other place appointed, or actually escaping from it, being guilty of felony without benefit of clergy. (1)

Certificate of having performed quarantine.

After quarantine has been duly performed, and the fact proved by the oaths of the master and of two of the persons belonging to the vessel, or by the oaths of two or more credible witnesses at the quarantine port, or an adjoining port, before a justice of the peace living near the place, or before two jurats or magistrates of the islands of Guernsey, Jersey, Alderney, Sark, or Man, that the vessels and persons have performed quarantine and are free from infection; and after producing a certificate, signed by the chief officer who superintended the quarantine of the ship, or person acting for him, the collector or principal officer of the customs, or the justice of the peace, or jurats or magistrates, are required to certify the facts, and no further restraint is to be imposed (2). All goods liable to quarantine are opened and aired in such places, for such time and in such manner, as directed by the orders in council; and after the orders have been complied with, a certificate will be given (3); the forgery of which is an unclergyable felony (4). If any person land, or move in order to their being landed, any goods, letters, or other articles, from on board a vessel liable to perform quarantine, or knowingly receive them after they have been so landed or shipped, he will forfeit a sum not exceeding £500, nor less than £100 (5). And if any person clandestinely convey, or conceal or secrete for the purpose of conveying, any letters, goods, or other articles, from a vessel performing quarantine, or from the lazaret, or other appointed place, he will be guilty of felony without benefit of clergy. (6)

Officers places, duties, and penalties.

The *officers* intrusted with the execution of the laws of quarantine, are the superintendants of quarantine and their assist-

(1) 45 Geo. 3. c. 10. s. 2, 3. and see s. 23. So of persons not infected entering lazaret and escaping, felony by s. 27. As to seizing and confining persons in a place not a public gaol, s. 24.

(2) 45 Geo. 3. c. 10. s. 28.

(3) 45 Geo. 3. c. 10. s. 29. and see 46 Geo. 3. c. 98. s. 5.

(4) 45 Geo. 3. c. 10. s. 30. 46 Geo. 3. c. 98. s. 5.

(5) 45 Geo. 3. c. 10. s. 31.

(6) 45 Geo. 3. c. 10. s. 31.

ants; and in the event of their absence or sickness, the principal officers of the customs, or officers particularly appointed by the commissioners of customs (1). The superintendants and assistant officers are appointed by instruments, signed by four of the commissioners of the customs and sealed with the seal of their office (2). If an *officer* embezzle goods, or is guilty of any other wilful breach or neglect of his duty, in respect of the ships, persons, goods, or articles performing quarantine, he forfeits his employment, becomes incapable of taking a new grant of it, and is liable to a pecuniary penalty of £100. If he is guilty of an abandonment of his duty in other respects, or knowingly and willingly allows either persons, vessels, or goods to be conveyed out of the lazaret or other appointed place, except under an order of the king in council, or of the lords of the privy council; or gives a false certificate of a vessel's having duly performed quarantine, he will be guilty of felony without benefit of clergy. If he knowingly and wilfully injure goods performing quarantine under his direction, he is liable to pay full costs of suit, and treble damages to the owner. (3)

Places for performing Quarantine.

The quarantine act which was passed in the reign of George II. provided that whenever his majesty, with the consent of parliament, should direct houses or lazarets to be provided for receiving and entertaining persons obliged to perform quarantine, or for depositing, opening, and airing goods, it should be lawful to erect the same in such places and in such manner as his majesty should deem necessary for these purposes, on payment of such rates, rent, or other consideration, as should be agreed upon or assessed, in the manner therein prescribed (4). By a statute of the 5th year of George III. a sum of money was granted by parliament towards building a lazaret; and afterwards some doubt having arisen whether, in order to effect this object, his majesty was sufficiently enabled by the authority conferred upon him to agree for the absolute purchase of land to be settled unalienably in the crown, it was enacted by the statute 12 Geo. 3. c. 37. that it should be lawful for the commissioners of the treasury, or the lord high treasurer, to contract and agree for the absolute purchase or sale, release or surrender, for the use of his majesty, of any estate of inheritance, in lands or tene-

(1) 51 Geo. 3. c. 46.
(2) 50 Geo. 3. c. 20.
(3) 45 Geo. 3. c. 10. s. 26.
(4) 26 Geo. 2. c. 6. s. 6.

ments, which they should judge to be by their situation and in other respects convenient and proper for the purposes intended, for such sums of money and upon such terms as they should think right. In pursuance of this authority, the commissioners of the treasury made purchase of certain lands on Chetney Hill, in the county of Kent, for the purpose of erecting a lazaret. The next statute was the 39 Geo. 3. c 99. which was entitled "An act to encourage the trade to the Levant seas, by providing a more convenient mode of performing quarantine, and for reducing the duty granted by an act of the last session on goods the manufacture of Great Britain, exported to any place within the Streights of Gibraltar." This statute provided that it should be lawful for his majesty, with the advice of his privy council, by any orders to be granted from time to time, to license goods arriving from the Levant without clean bills of health, to be imported without having been opened and aired in any of the lazarets of Malta, Ancona, Venice, Messina, Leghorn, Genoa, or Marseilles, as was before by law required; and that all such goods should be admitted to entry at any of the ports of Great Britain, or the islands of Guernsey, Jersey, Alderney, Sark, or Man; subject nevertheless to such regulations with respect to the opening and airing of the goods previously to their being landed, and to the performance of quarantine by the crew of the vessel importing, as the king in council might direct to be observed. But vessels arriving without clean bills of health, from any place except the Levant, were not restrained from entering into any of the ports of this country,—in none of which, however, sufficient provision was made, till lately, for the performance of quarantine by such vessels: and in the year 1800, several vessels which had arrived from the port of Mogadore, being supposed to be infected with the plague, were destroyed for want of a place adapted for their reception; and great expence was occasioned to the public. It became expedient, therefore, that a fund should be provided for enabling his majesty to defray the charges of erecting a proper lazaret on the lands at Chetney Hill, and also such charges as might arise from the necessary establishment and expences incident to such lazaret when completed, as well as from those of a floating lazaret to be made use of in the mean time until the permanent lazaret should be erected and completed. The statute 40 Geo. 3. c. 80. therefore provided that the commissioners of the treasury, or any three or more of them, or the lord high treasurer, should, after the passing of the act, give directions and make any con-

tract for erecting a lazaret upon the lands purchased on Chetney Hill, in the county of Kent, with all necessary and convenient accommodations for the purpose of performing quarantine, according to such plan as the king in council might approve or direct; and for defraying such expences, to cause a sum of £65,000 to be issued out of the consolidated fund, a part of which, not exceeding £30,000, was allowed to be issued within twelve months from the passing of the act. The statute 45 Geo. 3. c. 10. after reciting that the sum granted by the 39 & 40 Geo. 3. c. 80. had been found insufficient to defray the expences, and that a further sum had been granted by an act of the last session of parliament, provided, in order to ensure a due application of these funds, that it should be lawful for the commissioners of the treasury to give directions for completing the lazaret upon the lands purchased on Chetney Hill, with all necessary and convenient accommodations for the purpose of performing quarantine, according to the plan approved of and directed by the king in council, or such other plan as the king in council might from time to time approve and direct, and for defraying the expences attending it to cause any part of the money granted for that purpose to be issued when it might be necessary for the service; and the lazaret when completed, and all the buildings and accommodations belonging to it, were to be under the management and directions of the officers appointed by the commissioners of the treasury, or the lord high treasurer for the time being, for keeping the same ready for the reception of persons and goods, and for the due performance of quarantine (1). The salaries of the officers are appointed by his majesty, with the advice of the privy council (2). And the statute 45 Geo. 3. directed that these salaries and all contingent expences should be defrayed out of the same funds and in the same manner as the quarantine charges had been accustomed to be defrayed, until a revenue was raised for those purposes by the duties imposed by the 45 Geo. 3. upon the owners of vessels and their cargoes (3). The commissioners of the treasury were also enabled by the statute 45 Geo. 3. to provide one or more floating lazarets, until the lazaret on shore should be completed in the manner appointed by the 45 Geo. 3. (4) We have already seen that the several sums of £65,000 and £30,000 were at various times appropriated by parliament for

(1) 45 Geo. 3. c. 10. s. 1.
(2) 45 Geo. 3. c. 10. s. 1.
(3) 45 Geo. 3. c. 10. s. 1.
(4) 45 Geo. 3. c. 10. s. 2.

defraying the expences of the quarantine establishment. But it was further provided by the stat. 45 Geo. 3. that after the passing of that act the expences of performing quarantine should be defrayed by duties which are paid in the first instance by the ship owner, though the several owners of the cargo are also bound to contribute in the proportion which the tonnage of the cargo bears to the tonnage burthen of the vessel. (1)

If a vessel, or any part of its cargo, has performed quarantine in Great Britain, or the islands of Guernsey, Jersey, Alderney, Sark, or Man, after having arrived from any part of Turkey, or from a place in Africa within the Streights of Gibraltar, or in the West Barbary on the Atlantic Ocean, a duty is payable of 7s. 6d. the ton burthen, if it arrived with a clean bill of health; of 15s. if it arrived without such bill. If the vessel, or any part of its cargo, arrived from any place whatever, except from some part of Turkey, or a place in Africa within the Streights of Gibraltar, or in the West Barbary on the Atlantic Ocean, 3s. the ton burthen with a clean bill of health, 10s. without; or from any place whatever, with a cargo consisting in the whole or in part of goods the growth, produce, or manufacture of Turkey, or a place in Africa within the Streights of Gibraltar, or in the West Barbary on the Atlantic, 7s. 6d. whether with or without a clean bill. And if the vessel should have so arrived under such circumstances as may induce his majesty in council, or the lords or others of the privy council, or any three or more of them, to subject the vessel to the like quarantine as ships arriving from Turkey with clean bills of health, 7s. 6d.; as ships arriving without, 15s. And if a vessel, or any part of its cargo, having performed quarantine, shall enter inwards in the port of London, an additional duty of 1s. the ton burthen is to be paid. But no ship of war is liable to duty; nor any vessel employed in the service of government; nor any vessel which is not bound to a place in Great Britain, or the islands of Guernsey, Jersey, Alderney, Sark, or Man, and which has really put into a port of this country in distress; nor any vessel which has been obliged to perform quarantine only by reason of having certain goods on board and not producing the proper declaration as to their growth, produce, or manufacture; nor any vessel arriving in this country with a clean bill of health from any place except Turkey, or from a place in Africa within

(1) 45 Geo. 3. c. 10. s. 3.

the Streights of Gibraltar, or in the West Barbary on the Atlantic Ocean, in ballast, or whose cargo consists wholly of salt; nor any vessel which has duly performed quarantine in the lazarets of Malta, Ancona, Venice, Messina, or Leghorn, and has sailed from thence and arrived in this country with proper documents and vouchers attesting the fact, to the satisfaction of his majesty, or the privy council (1). If, after making good to the consolidated fund the sums of £65,000 and £30,000 which had been granted for erecting the lazaret and completing the quarantine establishment, the duties should be found to be more than sufficient for defraying the necessary expences, it was directed that they should be reduced in amount, and afterwards, if it became necessary, increased, provided they did not exceed the sums specified in the 45 Geo. 3. (2)

Recovery of Forfeitures and Penalties.

The quarantine act 45 Geo. 3. c. 10. directs that the forfeitures and *penalties* incurred under the provisions of the statute shall be recovered in the usual manner in the courts of record; one moiety of every penalty accruing to the informer, and the other moiety to the king, to be applied towards defraying the expences of erecting and maintaining the lazaret, as therein mentioned (3). All actions and prosecutions are to be instituted in the names of the government officers (4). Under the construction of the statute 26 Geo. 2. c. 6., which enacted that all persons going on board of ships coming from infected places should obey such orders as might be made by the king in council, without annexing any particular punishment, the disobedience of such an order was held to be an indictable offence, and punishable as a misdemeanor at common law (5); the statute 45 G. 3. directs that every offence not made felony, and every offence or disobedience to any order in council made for carrying the act into execution, for which no specific punishment is provided, shall be determined before two justices of the peace, and the offender punished by a pecuniary fine of £50, or by three months imprisonment, at the discretion of the magis-

(1) 45 Geo. 3. c. 10. s. 3.

(2) 45 Geo. 3. c. 10. s. 4 Ships not to clear till duties paid, s. 5. Ship-owners to recover from importers a proportionate sum, s. 6.

(3) 45 Geo. 3. c. 10. s. 34.

(4) 45 Geo. 3. c. 10. s. 37. 40. see ante 1 vol. 801.

(5) The King v. Harris, 4 T. R. 202. 2 Leach, Cro. Cas. 549. S. C. and 2 Chitty's Crim. Law, 551. where see form of information, and see 45 Geo. 3. c. 10. s. 40. as to power to arrest, &c. under quarantine laws.

trates (1). An attainder of felony under the quarantine act does not extend to work any corruption of blood, or forfeiture of personal or of landed property (2). All offences against the quarantine laws, whether they happen within the kingdom or without, may be tried in any county in England or Scotland, or in the proper courts of justice in the islands of Guernsey, Jersey, Alderney, Sark, or Man (3). In actions for any thing done in pursuance of these laws, the defendant may plead the general issue; if he succeed, he is entitled to treble costs; and every action or suit must be brought within two months. (4)

The *consequences* attendant upon the performance of quarantine are next to be considered in their effect upon contracts between individuals. First, it is observable that the protraction of risk occasioned by a vessel's being detained to perform quarantine does not put an end to an insurance upon it. The protection afforded by a policy of insurance continues until the ship has been moored at anchor 24 hours in good safety; and a vessel which is detained for the purpose of performing quarantine is not considered as being moored in safety. It has accordingly been determined, that if a vessel before the 24 hours are expired be ordered to the proper place to perform quarantine, the risk continues, although she does not leave her moorings till long after the 24 hours are expired (5). So the consignor of goods is entitled to exercise his right of stopping them in transitu while they are performing quarantine, and before they have reached their place of destination, for the goods remain in transitu, and the voyage is considered as incomplete until quarantine has been performed (6). The prohibition of all public intercourse by the law of a foreign port, in consequence of the prevalence of an infectious disorder, does not however afford any excuse for the non-performance of a covenant in a charter-party to load a cargo on board within a particular time, whatever effect might be produced by a similar prohibition in the law of this country; for although communication may have become

(1) 45 G. 3. c. 10. s. 38.

(2) 45 G. 3. c. 10. s. 39. The answers of the master, and the direction of the quarantine officer are to be received as primâ facie evidence of the liability to perform quarantine, s. 40. A summary power to arrest by judge's warrant, and other regulations of the proceedings, by s. 41.

(3) 45 G. 3. c. 11. s. 42.

(4) 45 G. 3. c. 11. s. 43.

(5) Waples v. Eames, 2 Stra. 1243. Park's Ins. 7 ed. 54. 1 Marsh. Inst. 2 ed. 264.

(6) Holst v. Powna and another, 1 Esp. Rep. 240. Whitmarsh, Bankrupt Law, 117.

dangerous by the prevalence of the disorder, or impossible, in consequence of the measures adopted by the authorities at the foreign port, yet if the covenant contain no exception of such accidents, the freighter must answer for the violation of his covenant to the person with whom the covenant was made (1). It is therefore advisable for the freighter, when calamities of this kind are likely to happen, to provide for them in the charter-party, by an express exception. As quarantine is regarded as a restraint of princes, generally provided against by merchants in hiring ships, there is no charge to the cargo for demurrage; the ship-owner bears the loss by the detention, which is calculated in the charge made for the hire of the vessel. With regard also to the duty of the owner of the cargo, considered with relation to the ship-owner, it is to be remarked, that when a vessel arriving from Turkey or other infected country is obliged to perform quarantine before its entry into the port of London, it is usual for the consignee to send down persons at his own expence to pack and take care of the goods; and therefore where a consignee had omitted to take this precaution, and goods were damaged by being sent loose on shore, it was held that he had no right to call on the master for compensation (2). A covenant in a charterparty, by which the owner of the vessel engages that the ship shall be provided with every thing needful and necessary for the voyage, obliges him to furnish a bill of health for a voyage from this country to Cagliari in Sardinia, that document being required by the law of Sardinia, in order to dispense with the performance of quarantine. For the engagement on the part of the ship-owner renders it incumbent upon him to be provided with all such documents as may be necessary for performing the voyage with reasonable expedition, although they may not be required by the law of nations, or by the law of this country. (3)

We shall conclude this subject with a brief account of the practical inconveniences which have been represented to arise from the performance of quarantine. In the first place, the

Inconveniences to Commerce result from Quarantine Regulations. (4)

(1) Barker v. Hodgson, 3 M. & S. 267. 8 Term Rep. 267.

(2) Dunnage v. Joliffe, Sittings coram Kenyon, C. J. at Guildhall, p. Mich. T. 1789. Abbott on Shipping, 261.

(3) Levy v. Costerton, 1 Holt, 167. 1 Stark. 212. 4 Campb. 383. S. C. Abb. on Shipp. p. 3. ch. 3. s. 4. p. 236.

(4) For many of the following observations the author is indebted to the late Sir John Jackson, and to Mr. Marten

time occupied in the performance of quarantine, and the heavy expence to which it gives rise, must be considered by the ship owner in the sum which he demands for the hire of the vessel. He cannot always calculate upon a clean bill of health, and must therefore make his calculation upon the probability of obtaining a foul bill. Moreover it is asserted, that in Turkey a foul bill of health may be issued from intrigue and mercantile manœuvre, as well as from the actual occurrence of the plague; but from whatever cause, the British ship-owner must suffer the result. Hence the freight must be higher, and the increased ratio of freight is prejudicial to the interchanges of commerce; the loss of time is injurious to the ship-owner in the delay of the voyage, and to the merchant, in the return of his capital. The extra pilotage into and from quarantine; the extra price of necessaries to the ship, and the charges of release, all concur to render quarantine a source of inconvenience to trade with places liable to infection. 2dly, Places appointed for the performance of quarantine are always near the sea. Sometimes in open road-steads, and at all times the ship under restraint is in a measure insulated. If a storm arise, the yellow flag would deter from affording the ready assistance which would be given in ordinary cases. It would not be finally withheld if lives on board were in danger; but it would be given reluctantly, through fear of after personal confinement to the extent to which the vessel under restraint would be liable. Vessels going alongside a floating lazaret, if while alongside they should be caught with a gale of wind, receive damage from the collision, which would not have occurred in any other situation. 3dly, Fruit and other perishable commodities are liable to injury; and in some circumstances more than such as would arise from mere lapse of time. Fruit from Turkey is brought generally in wood packages, which not being susceptible, permit the delivery at ten days from the putting the guardians on board; or if she has enumerated goods, from the finishing of the probationary airings and delivery of the enumerated goods to the lazaret; viz. twenty-five days from the time of putting the guardians on board. If with a foul bill, fruit be in susceptible packages, it may be shifted to other packages; but this would be at an enormous expence, and at risk of much damage; it would then be deliverable in 20 instead of 10 days, or 35 instead of 25 days. If not shifted, it must lie the 40 days, or if there be on board enumerated goods, 55 days. Fruit is however seldom damaged by lying, unless it have received damage on the voyage, or got

heated. Cotton, rags, hemp and silk, and other articles, if at all heated, would greatly injure by detention; for although put on board the lazaret to air, the airing would be ineffectual to a drying, and far short of what would be given by the merchant, if free in his own warehouse. 4thly, As arrivals accumulate by the detention of quarantine, the market by such known arrivals gets encumbered by the increased quantity for sale, now no longer in a state of expectation, but already safe from sea peril, and therefore regarded by the purchaser as already in port. The cargoes of each arrival are almost immediately known, and the depreciation in price between the arrival of a vessel and the free delivery of her cargo, has sometimes varied from 20 to 40 per cent. This gives a great check to mercantile adventure. 5thly, As quarantine is regarded as a "restraint of princes" generally provided against by merchants in hiring ships, there is no charge to the cargo for *demurrage*, but the ship-owner bears the loss (calculated in the charge made for the hire of the vessel) by the detention. The seamen's wages and the expence of victuals, together with the wear and tear of the ship, fall upon the ship-owner. There is however no difference in the premium of insurance on account of the ship being liable to quarantine. But the quarantine duties are extremely high. Every ship from Turkey for London, without a clean bill of health, pays the very large amount of sixteen shillings per ton on her register measurement. Thus a vessel of only two hundred tons measurement, coming from London, and performing quarantine at Standgate Creek, would pay £160; if with a clean bill, £85; from other parts, less. Besides this, the ship-owner sustains a serious loss by the great lapse of time, and wear of his cables. Ships are hired according to their classes. No person will hire a vessel which has entered into the second class, if he can obtain one on similar terms which is still in the first class. But in most cases the passing from the first down to the second class is determined by the age of the vessel. A ship subject to delays of quarantine cannot perform so much work in a given time, as one not so subject; she cannot therefore earn her first cost during the time of her being a first class vessel; and thus the owner has, at the expiration of the allowed time, a vessel of depreciated character, and a bar put in the way of her future employment. 6thly, Pilots are subject to confinement during quarantine, though for a less duration than other persons. Pilots get eight shillings per day for every day while the ship is at

the quarantine ground, and themselves under restraint; and the ship-owner (if the ship is bound to London) pays 50 per cent. more pilotage than if the ship came direct to Gravesend. 7thly, Ships have come from Egypt in less than 30 days, and from the Mediterranean in 20 days. But the length of restraint without a clean bill of health, and with enumerated goods, may be, including the airings of the latter, and their delivery and re-loading, 60 days, without reckoning the extra time in going to and coming from the place appointed for performance of the quarantine. Enumerated goods are divided into two classes, which have distinct times for release; but though those of the second class are first at liberty, they must wait for those of the first class, if the ship is to receive her cargo again; and that if the ship leave the goods behind, the owner becomes subject to the hire of hoys to bring them up to London from Standgate Creek, and is also responsible to the original shipper for all *plunderage*, whether by the navigators of the hoys or by water pirates who have been known to watch hoys which have been silk laden, from the creek, and to board them in the night with a strong force, and rob the cargoes to a very serious amount. It also sometimes happens, that when the time by law for release has arrived, the goods could not be delivered from the lazaret, how-ever wanted, because that in the interim of their restraint, other ships and goods have arrived and been put into the same laza-ret, and on the same deck, and the former could not be de-livered till the time of the release of the latter from quarantine has been completed. It is evident therefore, that the deten-tions occasioned by quarantine, forms, in a variety of ways, a serious injury to trade. But added to all these, there is ano-ther evil of no small amount, in the losses by *embezzlement* in goods subject to quarantine. Deficiencies have been found in the receipt of goods, some of which have doubtless been traced to the time of quarantine; and although all of them may not be chargeable there, still the difficulty of tracing the loss is vastly increased by the delivery into and out of the lazaret, where the packages have been cut open for airing. Silk is delivered to the lazaret by weight, and received again by weight, but the gross weight of the package is the only criterion; if that be correct, any alterations in the article itself is not perceived. The captain of the ship is subject to no responsibility; the persons employed in the lazaret are no longer responsible, except upon direct proof; the change is not discovered except in the mer-

chant's warehouse, or sometimes in the possession of the consumer to whom the goods may have been sold, after a considerable lapse of time. Such being the inconveniences which result from the quarantine system, it is manifest that it is only upon grounds of the most urgent expediency, that the continuance of such regulations could be justified and allowed.

## CHAP. V.

### *Of Convoys.*

A CONVOY is a naval force appointed by government for the protection of merchant ships and others during the whole voyage, or such part of it as is thought to require such protection. The consideration of the laws of convoy, leads us to enquire, first, what vessels are obliged to sail with convoy; secondly, what is the course to be pursued by those on which this obligation is imposed, the place from which they must sail, with what vessel, how far they must proceed with convoy, with the penalties and consequences attached to sailing without convoy, or separating from it. Lastly, the duties of the officers and seamen belonging to the convoy.

To avert the mischiefs that would arise to the commerce of this country, if vessels were allowed to sail without sufficient protection, acts of parliament have been frequently passed, during the existence of hostilities, to oblige ships to sail with convoy. The last act was the stat. 43 Geo. 3. c. 57. which expired at the temrination of the late war. This statute provided that it should not be lawful for any vessel belonging to his majesty's subjects, except as therein provided, to sail or depart from any port or place whatever, unless under the convoy and protection of such ship or ships, vessel or vessels, as should or might be appointed for that purpose. Some vessels, however, were exempted by statute from the obligation to sail with convoy. In the *first* place, it did not extend to any vessel not required to be registered. A foreign-built ship, British-owned, is not required to be registered, and therefore may sail without convoy by virtue of this exception (1). *Secondly*, the act did not extend to any vessel for which a licence to sail without convoy should be granted by the lord high admiral of Great Britain, or by the commissioners for executing the office of lord high admiral, or a person duly authorized by him or them for that purpose. A licence for a

(1) Long v. Duff, 2 Bos. & Pul. 209.

ship to sail without convoy, describing her as bound on a voyage to Gibraltar, when in fact she sailed from hence with instructions to make the best of her way direct to Palermo, and not to touch at Gibraltar unless ordered into the bay by cruizers which she might meet in passing it, is fraudulent and void, and will not legalize an insurance by the charterer of such ship sailing without convoy, upon goods put on board, and insured from hence to Palermo, &c. with liberty to proceed to any ports to seek convoy, &c. and therefore will not cover a loss which happened in the latter part of the voyage, although the ship, being compelled by stress of weather, against the master's intentions, did in fact go to Gibraltar, and although no convoy was to be procured there, nor licence to proceed without it (1). So where a trader shipped goods for Cagliari on board a general ship, represented as sailing with licence and without convoy, and bound for Gibraltar, Cagliari, and Majorca, which had a licence to sail without convoy to Gibraltar only, and sailed from Gibraltar without convoy or licence, it was held that an insurance of such goods by the shipper was void (2). An insurance on goods, however, is not vitiated by a mis-description in the licence of the force of the vessel (3). We shall hereafter have occasion to advert to the consequences of sailing without licence and without convoy, and therefore *content ourselves* with observng at present that there is this distinction between sailing without convoy, and sailing without licence; if a ship sails without convoy, and the assured is ignorant of her sailing without convoy, he is protected; but if he knows of her sailing without convoy, not knowing whether she has a licence or not, he is not protected, unless she has a licence; his security, in this case, depends upon the fact, whether the ship has a licence for the voyage or not (4). A ship licensed to sail without convoy, provided she is armed with a certain force, must take that force on board before she breaks ground (5). *Thirdly*, the act does not extend to a vessel proceeding with due diligence to join convoy from the place at which she is cleared outwards, in case such convoy is appointed to sail from some other place (except, nevertheless, that the statute requires a bond to be taken upon the clearance outwards

(1) Wainhouse v. Cowie, 4 Taunt. 178. Higham v. Agnew, 15 East, 517.
(2) Darby v. Newton, 6 Taunt. 544. 2 Marsh. Rep. 252. S. C.
(3) Edwards v. Footner, 1 Campb. 532. See post.
(4) Wainhouse v. Cowie, 4 Taunt. 187, 8. Darby v. Newton, 6 Taunt. 547.
(5) Hinckley v. Walter, 3 Taunt. 131.

of such vessel (1), for the 5th section provides, that it shall not be lawful for the officers of the customs in Great Britain or Ireland to suffer any vessel, which is required by the act not to sail or depart without convoy, to be cleared outwards, until the master has given bond to the crown with one sufficient surety in the penalty of the value of the ship; which bond is to be taken by the collector or other principal officer of the customs, with condition that the vessel shall not sail without convoy, contrary to the directions contained in the act, and shall not afterwards desert or wilfully separate or depart from it, without leave obtained from the captain or other officer in charge of the convoy, before the vessel has arrived at her place of destination, or so far on her voyage as such convoy is appointed to accompany and protect the vessel (2). A ship cannot legally proceed from port to port to join convoy, unless a bond has been given that she shall not sail without convoy. If the ship is licensed to sail without convoy, with a certain complement of men, and clears out without giving bond to sail with convoy, and without having the force required, she cannot legally go round from her port of clearance to a port of convoy (3). *Fourthly*, the act does not extend to a ship bound from any place in the united kingdom to another place within the same (4); nor, *fifthly*, to any ship belonging to or in the employ of the East India company or the Hudson's Bay company (5). *Further*, the act did not extend to affect a vessel sailing without convoy from a foreign port, nor to subject the master to its provisions, in case there should not be any convoy appointed for such a vessel, nor any person at the foreign port duly authorized by the admiralty to appoint convoys for such vessels, or to grant licences to such vessels to sail without convoy (6). In order, therefore, to prove the illegality of a voyage, on the ground that the vessel sailed without convoy from a foreign port, it is not sufficient to show that the admiral in command on the foreign station, had actually appointed convoy, without further producing the order from the commissioners of the admiralty, or otherwise showing that the convoy was appointed by a person authorized by them (7). So the act provided that it should be lawful for any vessel em-

(1) 43 Geo. 3. c. 57. s. 6.
(2) 43 Geo. 3. c. 57. s. 5.
(3) Hinckley v. Walton, 3 Taunt. 131. 4, 5, 6.
(4) 43 Geo. 3. c. 57. s. 6. Abb. Ship, 245.
(5) 43 Geo. 3. c. 57. s. 6.
(6) 43 Geo. 3. c. 57. s. 8.
(7) D'Aguilar v. Tobin, Holt, C. N. P. 185. Darby v. Newton, 6 Taunt. 547, 548.

ployed in the Newfoundland fishery, being wholly laden with fish or other produce of the fishery, or with articles of the growth or produce of the island of Newfoundland, or coast of Labrador, to sail from any place within the island, or on the coast without convoy or a dispensing licence, except from the port of St. John's in Newfoundland, during the time that a person authorized by the admiralty (1) to grant licences is stationed or resident at that port (2). The obligation to sail with convoy does not indeed always depend upon act of parliament, but is sometimes imposed by the acts of the parties themselves. In a policy of insurance, a warranty is frequently inserted that the vessel shall sail with convoy, and the construction of this warranty is in general the same that has been adopted with regard to the act of parliament (3). The ship-owner also frequently undertakes that the vessel shall sail with convoy, either by the insertion of a clause to that effect in the printed papers or cards announcing the departure of the vessel, or by a stipulation in the bill of lading signed by the master. Where a ship is put up at the Royal Exchange by the broker as a general ship, warranted to sail with convoy, and hand-bills are distributed to the same effect, the owners are bound by such representation, although made without their authority, because, having employed the broker, they are answerable for any acts done by him in the course of his employment, and from the nature of the advertisement, and their opportunity of observing it, it may be presumed that they are acquainted with its terms (4). Whether indeed the owner is liable for not sailing with convoy, where the ship has been put up or advertised "to sail with convoy," but the bill of lading makes no mention of convoy, seems to be a point at present undecided (5). Thus much, however, appears to have been determined, — that if the owners have made a special contract for the employment of their ship, the master cannot, by virtue of the general and implied authority of his character as master, annul such a contract, and substitute an-

(1) D'Aguilar v. Tobin, Holt, C. N. P. 185.

(2) 43 Geo. 3. c. 58. s. 16.

(3) Cohen v. Hinckley, 1 Taunt. 253, 4.

(4) Rinquist v. Ditchell, 3 Esp. 64. Abb. on Ship. 122. 224. S. C. The broker had signed some bills of lading, in which the ship was warranted, 3 Esp. 65. Sanderson v. Busher, 4 Campb. 55. Peel v. Price, 4 Campb. 243.

(5) Rinquist v. Ditchell, 3 Esp. R. 64. Abb. 122. 224. dict. acc. Snell v. Marryat, d. 644. dub. Peel v. Price, 4 Campb. 243.

other for it with the other contracting party (1). A bill of lading signed by the captain, stating the ship to be bound to the port of destination with convoy, amounts to an absolute undertaking, by which the owner is bound that the vessel shall sail with convoy (2). If an engagement of this sort be entered into on the part of the owner, and the vessel do not sail with convoy, he will be answerable to the freighter for his having lost the benefit of an insurance, or of a return of premium, by the non-performance of the engagement. It is no answer to an action for the breach of such an undertaking, if the ship did in fact sail without convoy, that the state of the weather prevented the vessel from joining convoy, that if the wind had continued as it was at the time she left her moorings, she would have come up with the convoy without difficulty; but that it became quite calm, and when she had crossed the bar of the port, she found a heavy sea setting in upon the shore, which drove her considerably to the southward; that she made every practicable exertion to get up to the commodore in the night, but could not; that in the morning she found that the fleet had sailed; that she followed, and could not overtake it; but afterwards arrived in safety (3). In such an action, however, by a merchant against the owner of the vessel, it is a sufficient defence to shew that the vessel was delayed in taking on board the plaintiff's goods; and that after receiving them, the master having made every practicable exertion to join the convoy with which he ought to have sailed, but without effect, proceeded on his voyage without convoy (4). The following instance is mentioned by a foreign writer as justifying the sailing without convoy: A ship was insured from Marseilles to Toulon, there to join convoy, and proceed to America. In her passage to Toulon, she suffered considerable damage, and was obliged to undergo a repair there, which rendered it impossible for her to avail herself of the convoy. This being a misfortune occasioned by the perils of the sea, he thought that the ship, when repaired, might proceed without convoy, at the risk of the insurer (5). And it has been determined in this country that a vessel which sails with convoy and is driven back by stress of weather into her port of clear-

(1) Burgou v. Sharpe, 2 Camp. 529.

(2) Sanderson v. Busher, 4 Campb. 56.

(3) Sanderson v. Busher, 4 Campb. 56

(4) Majalhaens v. Busher, 4 Campb. 54.

(5) Emerigon, tom. 1. p. 161.

ance, may lawfully sail thence again with her cargo on the voyage, without waiting for the next convoy from the same port, or joining convoy from any other port (1). We shall now proceed to consider the conduct to be adopted by the vessel which is to sail with convoy.

Requisites for the voyage.

Previously to the departure of the vessel, the statute requires that a notice shall be given by the admiralty directing the masters of vessels that are to sail with convoy to have on board such flags, vanes, or other materials as are necessary for the purpose of distinguishing the vessels, and of enabling the masters to answer signals made by the captain or other officer entrusted with the care of the convoy, such flags, vanes, or materials to be provided by the master, which notice is to be inserted in the London and Dublin gazettes, and transmitted to the commissioners of the customs in England, Ireland, and Scotland, in order to the same being sent to the principal officers of the customs at the several ports, for the information of the persons concerned; and after such notice, no vessel can be cleared outwards, until it shall appear to the satisfaction of the proper officer of the customs that the ship is provided with such flags, vanes, or other materials (2). Before the ship leaves the place of her departure, the master must obtain, or at least use all due diligence to obtain, the *sailing instructions* and orders delivered out by the commander of the convoy to the masters of the trading vessels that are to sail under his protection. The value of a convoy appointed by government in a great measure arises from its taking ships under its controul, as well as its protection. But that controul does not commence until sailing instructions have been obtained, nor can it be enforced otherwise than by their means. Indeed, the reason of the rule which requires that the convoy should be appointed by government shows the necessity of having sailing instructions, since without them the ship does not stand in that relation, or under those circumstances, in which she can take the full benefit of the government convoy. Without them, if the fleet be dispersed by a storm, the ship is unable to learn the place of rendezvous, or to obey signals, if she should be attacked by the enemy (3). It is not, however, necessary that the vessel should at

(1) Laing v. Glover, 5 Taunt. 49.

(2) 43 Geo. 3. c. 57. s. 9.

(3) Anderson v. Pitcher, 2 Bos. & Pul. 164.

all events obtain sailing instructions; but if they can be obtained by due diligence, she is bound to procure them. If sailing instructions are applied for, and refused by the commander of the convoy, the obligation to sail with convoy may be complied with without obtaining them; because the court will presume when they are refused under such circumstances, that they are refused for the benefit of the trade which is to be protected by the convoy (1). So the want of sailing instructions is excused, if the master was prevented from obtaining them by stress of weather (2). The convoy act provides, that if any vessel required by the act not to sail without convoy shall be in imminent danger of being boarded or taken possession of by the enemy, the master shall make signals by firing guns or otherwise, to convey information of his danger to the rest of the convoy, as well as to the ships of war under the protection of which he is sailing; and that in case of such ship being boarded and taken possession of, he shall destroy all instructions confided to him relating to the convoy; and every master who shall neglect to make such signals, or shall wilfully omit to destroy such instructions, shall for every offence forfeit a sum not exceeding £200. (3)

From what place.

To satisfy a warranty in a policy of insurance that the vessel shall sail with convoy, she is not obliged to depart with convoy from the place of lading; the warranty is satisfied if the vessel sail with convoy from the usual place of rendezvous. As if a ship from London take convoy at the Downs, when that is the place at which the convoy is appointed (4), or from Spithead, when there is no convoy in the Downs (5). In a late case, a ship sailing on a voyage from the river Thames to Malta was holden to satisfy the warranty by proceeding directly to Portsmouth, that being the place of rendezvous for the Mediterranean convoys, and having been captured on her way to Portsmouth, the underwriters were held liable (6). So a vessel in-

(1) Veeden v. Wilmot, Guildhall, July 1744. Park on Ins. 7 ed. 500 a. 1 Bos. & Pul. 7. note, 8vo ed. 2 Bos. & Pul. 170. Webb v. Thomson, 1 Bos. & Pul. 6.

(2) Sanderson v. Busher, 4 Campb. 56. by Gibbs, C. J. Victoria v. Cleaver, 2 Stra. 1250. Webb v. Thomson, 1 Bos. & Pul. 5. Anderson v. Pitcher, 2 id. 164.

(3) 43 Geo. 3. c. 57. s. 10.

(4) Lethulier's case. 2 Salk. 443.

(5) Gordon v. Morley, 2 Stra. 1264. dict. acc. Cowp. 601.

(6) Warwick v. Scott. 4 Camp. 62.

sured from Jamaica with a return of premium for convoy, was holden to have pursued the proper course by sailing from St. Anne's bay in Jamaica, in order to join the convoy at Bluefields, another port in the same island, and the general place of rendezvous for vessels on the Jamaica station, although in so doing she departed out of the direct line of the voyage to this country (1). A vessel, even if insured, may deviate from the common track of the voyage, for the sake of joining the convoy, especially if by the terms of the policy a return of premium be allowed for sailing with convoy. (2)

The warranty that the vessel shall be protected by convoy is sometimes expressed by the words that the vessel shall sail with convoy; sometimes that the vessel shall depart with convoy; but the meaning of both expressions is the same, and both equally intend that the master shall not only commence his voyage at the usual place of rendezvous under the protection of the convoy, but shall continue during his course under the same protection, unless prevented from so doing by tempest or other unavoidable accident, in which case the undertaking will be complied with if the master does all that is in his power to keep the benefit of the convoy (3). The convoy act provides that the master of a vessel which shall sail or depart under the protection of convoy shall use his utmost endeavours to continue with it during the whole of the voyage, or such part of it as the convoy is directed to accompany and protect the vessel, and shall not wilfully separate or depart from it upon any pretence whatever without leave of the officer in command of the convoy (4). It seems that if a vessel be insured "to sail with convoy," and from the neglect of the master in not coming on board in time, she lose the convoy, or even her proper position in it, the underwriters are discharged (5). But the obligation to sail with convoy is complied with if the vessel sail with the convoy appointed by government, although it does not proceed the whole length of the voyage: as where the ship was bound to Saint Sebastian, and the convoying vessel

Keeping with Convoy.

How far must proceed with Convoy, and what is Convoy.

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(1) Bond v. Nutt, Cowp. 601.
(2) Id. ibid. D'Aguilar v. Tobin, 1 Holt, 185.
(3) Lilly v. Ewer, Dougl. 74. Jeffries v. Legandra, 2 Salk. 443. Carth. 216. 3 Lev. 320.
(4) 43 Geo. 3. c. 57. s.2.
(5) Waltham v. Thompson, 1 Marsh. Ins. 376. Taylor v Woodness, Park. 510.

proceeded only as far as Bilboa (1); or, if separate portions of the convoying force are appointed for different parts of the voyage, the warranty to sail with convoy is complied with by sailing with the force assigned by government (2). So where a vessel, from Tortola to London, was warranted to sail with convoy for the voyage, a frigate was sent by the commander at Saint Kitt's to Tortola to bring up the ships from thence, with orders, if they got a certain distance to the northward, to go straight for England: and the fleet sailed from Tortola, but the vessel insured being a bad sailer fell behind, lost the convoy, and bore away for England, but was captured on her passage; the jury found that the ship had sailed with convoy, and the court held the verdict right (3). But still, as already observed, the ship must sail with the convoy assigned by government; and the accidental protection afforded by a ship of war proceeding on the same voyage, will not be considered equivalent to a sailing with convoy. And, therefore, where a merchant vessel, bound from Jamaica to London, encountered at Kingston the Glorieux ship of war, Captain Cadogan, who was on his way to join Admiral Graves at Bluefields, the admiral having been appointed by the commander in chief to rendezvous at that place to convoy the merchant ships to Great Britain, but before the vessel arrived at Bluefields, the admiral had sailed away; it was holden, that although she continued in the company of the Glorieux, which acted in every respect as convoy from the place of her departure, and in the further prosecuting of the voyage came up with the convoy at Port Antonio, yet she had complied with the undertaking to sail with convoy, Port Antonio not having been appointed as the place of rendezvous. And Lord Mansfield observed, that when ships come to the place of rendezvous they take sailing orders from the admiral, which are essential to convoy, as by them they become acquainted with the signals, and for what places they are to steer, in case of dispersion by storm, or for any other just cause. But upon a second trial in respect of the same policy, by the insured against another underwriter, the Glorieux having been proved to

(1) Deguino v. Bewicke, 2 Hen. Bla. 554.

(2) Id. ibid. Smith v. Readshaw, Park, 7 ed. 510. ch. 18 De Garey v. Glagget, id. 511. Manning v. Gist, 1 Marsh. Ins. 2 ed. 367. ch. 9. s. 5. Audley v. Duff, 2 Bos. & Pul. 111.

(3) Id. ibid.

form part of the convoy, the court held that the plaintiff was entitled to recover. (1)

Penalties.

The convoy act provides that if the master of a vessel which is required not to sail or depart without convoy, shall, in violation of the act, sail or depart from any place whatever, except as therein provided, without convoy appointed for the purpose, or shall afterwards desert or wilfully separate or depart from the convoy, without leave obtained from the commanding officer, before the vessel has arrived at her place of destination, or so far on her voyage as the convoy is directed to accompany and protect the vessel, such master shall forfeit for every offence the sum of £1000; and if the whole, or any part of the cargo, consist of naval or military stores, he will be liable to forfeit £1500: but the penalty in either case is subject to mitigation, at the discretion of the court, to a sum not less than £50 (2). Where a ship was insured from London to Berbice, with an extensive liberty of touching and trading at all places, and the master put into Madeira and staid there after the convoy with which she sailed had proceeded on the voyage; this was considered not to be a wilful desertion of convoy within the meaning of the act, as the master did not know when the convoy sailed, and left Madeira in the contemplation that he should be able to overtake it (3). The act also declares, that if any such ship shall sail or depart without convoy, or shall afterwards desert or wilfully separate from it (4), in violation of the statute, every policy of insurance, or other contract of insurance, upon the vessel, or any goods on board, or upon any property, freight, or interest arising out of them, which shall be the property of the master, or of any person interested in the vessel or cargo, who shall have directed, or have been in any way privy to or instrumental in causing the departure without convoy, or the wilful separation from it, shall be null and void, to all intents and purposes, both at law and in equity; — any contract or agreement to the contrary notwithstanding; — and that nothing shall be recovered thereon by the insured for loss or damage, or for any premium of insurance; and if any party to such insurance, his executors, or administrators, any broker, agent, or other person, shall knowingly make or procure to be

(1) Hibbert v. Pigon, Park, 498.
(2) 43 Geo. 3. c. 57. s. 3.
(3) Williams v. Shee, 3 Campb. 469.
(4) Williams v. Shee, 3 Campb. 469. supra.

made, or transact any settlement upon such insurance, or allow in account, or agree to allow, any sum or sums of money upon a loss or peril relating to such insurance, he shall forfeit £200 (1). But the statute does not invalidate a policy of insurance on the ground that the vessel sailed without convoy, unless it appear that the party insured was privy to or instrumental in the sailing without convoy (2). The first section, which prohibits sailing without convoy, does not affect the policies of those who are not privy to the sailing without convoy; and it is not sufficient to shew that the vessel sailed without convoy with the privity or through the instrumentality of an agent, without shewing that the agent was invested with authority from his principal for the express purpose (3). From a comparison, however, of the various clauses of the act, there appears to be this difference between a sailing without convoy and a sailing without license, — that if a ship sails without convoy, but the insured is ignorant of that circumstance, he is protected; but if he knows of her sailing without convoy, not knowing whether she has a license or not, he is not secure, unless a license for the voyage has, in fact, been obtained (4). A person, therefore, who ships goods on board a vessel which is to sail without convoy, does it at the risk of her having a sufficient license for the voyage, although he intended that the vessel should be licensed, and had no concern in the management of the ship, or the obtaining of the necessary documents (5). But the insurance is not vitiated by a misdescription in the license of the force of the vessel (6). And the clause vacating contracts when the vessel sails without convoy extends to contracts of insurance only; and it has been determined, that the charterer of a vessel cannot plead to an action brought against him by the owner on the charter party, for not providing a cargo at the foreign port, that the ship sailed on the voyage without convoy, and that the plaintiff was privy to and knew the same, without showing that it was in the contemplation of the parties to violate the act. For although a contract may be illegal which is entered into with an

(1) 43 Geo. 3. c. 57. s. 4.

(2) Cohen v. Hinckley, 1 Taunt. 249. Hinckley v. Walton, 3 Taunt. 131. See Edwards v. Footner, 1 Campb. 532.

(3) Carstairs v. Allnutt, 3 Campb. 497.

(4) Hinckley v. Walton, 3 Taunt. 136. Wainhome v. Cowie, 4 Taunt. 178. Wake v. Atty, 4 Taunt. 493. Darby v. Newton, 6 Taunt, 544.

(5) Wainhome v. Cowie, 4 Taunt. 178.

(6) Edwards v. Footner, 1 Campb. 532.

understanding that the provisions of an act of parliament are to be violated by carrying it into execution, yet the charter-party in the present case could not be avoided by the act of the captain in sailing without convoy, where such conduct on his part formed no part of the agreement between the contracting parties. (1)

One moiety of all pecuniary penalties and forfeitures imposed by the 43 Geo. 3., so far as they relate to vessels sailing without convoy, or wilfully separating from it, or to insurances, belongs, if sued for within the space of one year from the time of their being incurred, to his majesty; and the other moiety, with full costs of suit, to the persons informing or suing; and may be sued for in any of the courts of record at Westminster, whether the offences were committed in England, or at sea, or in parts beyond the seas; and in the case of vessels sailing from any port in Scotland, in the court of exchequer at Edinburgh, for any offences so committed; and in the case of vessels sailing from any port in Ireland, in the courts of record at Dublin; and in default of prosecution within the time so limited, no such penalty or forfeiture shall be afterwards recoverable, except in the name of the attorney-general in England or Ireland, or the king's advocate in Scotland, by information in the respective courts; and in this case, the whole penalty will belong to his majesty (2). The attorney-general and king's advocate have power to stay proceedings on a proper application, and when there was no fraudulent design, on such terms as they think proper: actions are limited to three months, the venue is local, the general issue may be pleaded, and the defendants are entitled to treble costs on a nonsuit, discontinuance, or verdict in their favour. (3)

The statute 43 Geo. 3. c. 160. directs, that if the captain of a merchant ship under convoy shall wilfully disobey signals or instructions, or any other lawful commands of the commander of the convoy, or shall desert the convoy without notice given and leave obtained for that purpose, he shall be liable to be articled against in the high court of admiralty, at the suit of the king in his office of admiralty, for disobedience to the order of the convoy;

(1) Wilson v. Foderingham, 1 M. & S. 468.

(2) 43 Geo. 3. c. 57. s. 12. Now exp.

(3) 43 Geo. 3. c. 57. s. 14. (A war act only).

and upon conviction, shall be fined at the discretion of the court in a sum not exceeding £500; and suffer such imprisonment, not exceeding a year, as the court shall adjudge (1). There is no branch of the service, says Sir William Scott, more unpleasant to naval officers, than that of convoying a fleet of merchant vessels; it is a duty which is painful in its own nature, and extremely difficult in its execution, even when there is no misconduct on the part of those who are to act under their orders. It must frequently happen that, among the different vessels confided to their care, some are navigated by unskilful masters, or sail badly from some fault in their own structure, and are not capable of paying prompt obedience to the signals that are made; and therefore, officers who bring with them the best disposition for the service, usually find that they have great difficulties to struggle with. But if these difficulties are to be aggravated by the disobedience and contumacy of the persons they are to protect, the duty becomes such as hardly any man can take upon himself without a certainty of failure, and cannot terminate otherwise than in a way fatal to the interests of commerce. This having been frequently made the subject of complaint, the court of admiralty was at length armed with very extensive powers for the prevention of the evil; and in the first prosecution which took place under the statute, that court, after taking into consideration that the defendant had, although at a somewhat late period, expressed himself in terms of humiliation, and that on a former occasion he had behaved in an exemplary manner, sentenced him to pay the full costs of suit, and the further sum of £50 to his majesty. (2)

Duties of Convoy.

The duty of the officers and seamen forming the convoy is prescribed by the articles set forth in the statute 22 Geo. 2. c. 33. for the regulation of his majesty's sea forces. The 17th article provides that the officers and seamen of all ships appointed for convoy and guard of merchant ships, or of any other, shall diligently attend upon that charge without delay, according to their instructions in that behalf; and whosoever shall be faulty therein, and shall not faithfully perform their duty, and defend the ships and goods in their convoy, without either diverting to other parts or occasions, or refusing or neglecting to fight in their defence if they be assailed, or running away cowardly,

(1) 43 Geo. 3. c. 160. s. 5.

(2) The King v. Hayth, Edwards, Adm. Rep. 81.

and submitting the ships in their convoy to peril and hazard, or shall demand or exact any money or other reward from any merchant or master for convoying of any ships or vessels intrusted to their care, or shall misuse the masters or mariners thereof, shall be condemned to make reparation of the damage to the merchants, owners, and others, as the court of admiralty shall adjudge; and also be punished criminally according to the quality of their offences, be it by pains of death or other punishment, according as shall be adjudged fit by the court-martial (1). By the treaty with Holland in 1667, it is stipulated that the men of war, or convoys of either nation, meeting or overtaking at sea any merchant ship or ships belonging to the subjects or inhabitants of the other, holding the same course or going the same way, shall be bound, as long as they keep one course together, to protect and defend them against all and every one who would set upon them. (2)

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(1) 22 Geo. 2. c. 33. s. 2. art. 17. First enacted by 13 Car. 2. c. 9. art. 13.

(2) 1 Beawes's Lex Merc. 6 ed. 366.

## CHAP. VI.

### *Of Wrecks.*

THE laws relating to goods *wrecked*, or cast away at sea, will next require consideration. A wreck (called in Latin *wreccum maris*, and in French, *wrec de mer*) signifies in our law such goods as after a shipwreck are cast upon land by the sea, and left there within some country, so as not to belong to the jurisdiction of the admiralty, but to the common law (1). But if a human being, or even an animal, as a dog, cat, or hawk, &c. escape alive from the ship, or if there be any marks upon the goods by which they may be known again, they are not at common law considered as wrecked (2); and in a late case, where goods were cast on shore, but no live animal escaped, and a person who found the goods claimed to retain them on behalf of the lord of the manor, and refused to deliver them up on a tender of salvage, the merchant to whom the property was consigned was held entitled, on proving his property by the bill of lading, to recover them in an action of trover (3). And the lord of a manor who claims wreck under a grant from the crown, cannot legally take possession of a shipwrecked vessel, or parts of it, against the consent of those who are at hand and upon the spot, employed by the owner to save and preserve them (4). The circumstance of a dog or cat escaping alive, mentioned in Bracton, and in the statute of Edward I., is only put as an instance affording a presumption of ownership, not as a condition upon which alone the property may be reclaimed; if the owner of the dog or cat or other animal was known, the presumption of the goods belonging to the same person would be equally

(1) 2 Inst. 167. Bracton, l. 3. c. 3. Mirror, c. 1. s. 13. and c. 3. s. de wrecks.

(2) Id. ibid. Hamilton v. Davis. 5 Burr. 2738, 9.

(3) Hamilton v. Davis. 5 Burr. 2732.

(4) Sutton v. Bush. 2 Taunt. 302. And see the Aquila, 1 Rob. Adm. Rep. 39.

strong, whether the animal was alive or dead; the mode of proof must be varied according to the circumstances of the case; goods are now generally marked; in ancient times marks would not be so common or so accurate, and hence a dog or cat afforded the most reasonable presumption for ascertaining the owner of the goods (1). If, however, no owner should appear, the property belongs of common right to the crown or its grantee; a branch of revenue which is said to have been vested in the king partly in consideration of his guarding and protecting the seas from pirates and robbers and partly to prevent the confusion which might otherwise be expected to arise from the existence of property without any assignable owner. The revenue of wrecks is frequently granted out to lords of manors as a royal franchise; but if any one be thus entitled to wreck in his own land, and the king's goods are wrecked thereon, the king may claim them at any distance of time (2). The property in wreck is vested in the king or the lord of the manor, against every one but the right owner, from the time that the goods touch land, even before seizure, the king's interest being in fact assigned by the law, in order to prevent any other occupant (3). In respect of this species of property, which draws to it the constructive possession, an action of trespass or trover may be maintained before seizure by the lord of the manor against a person who wrongfully takes the goods away (4), but not an indictment for felony (5). The statute 3 Edw. 1. c. 4. provides that where a man, a dog, or a cat, escapes alive out of the ship (6), the property shall not be deemed wreck; but shall be saved and kept by view of the sheriff, coroner, or king's bailiff, and delivered into the hands of such as are of the crown where the goods are found; so that if any sue for those goods, and after prove that they were his, or perished in his keeping, *within a year and a day* (7), they shall be restored to him without delay; and if not, they shall remain to the king, and be seized by the sheriffs, coroners, and bailiffs, and be delivered to the ville, which shall answer before the justices of the wreck belonging to the king. And where wreck belongeth to another than to the king, he shall have it in like manner. And he that otherwise doth and

(1) Hamilton v. Davis. 5 Burr. 2732.

(2) 2 Inst. 168. Bac. Abr. tit. Prerogative, B. 7.

(3) 5 Co. 107.

(4) Smith v. Mills. 1 T.R. 480.

(5) Hawk. P. C. b. 1. c. 35. s. 39. but see alterations by statute, Hawk. P. C. b. 1. c. 56. 2 East. P.C. ch. 16. s. 86.

(6) Supra.

(7) Vide 53 Geo. 3. c. 87. s. 3. 12 Ann. st. 2. c. 18. s. 2.

thereof be attainted, shall be awarded to prison, and make fine at the king's will, and yield damages also. And if a bailiff do it, and it be disallowed by the lord, and the lord will not pretend any title thereunto, the bailiff shall answer, if he have whereof; and if he have not whereof, the lord shall deliver his bailiff's body to the king. The year and day mentioned in the statute are accounted from the time of the seizure (1); and if the owner dies within the time, his executors or administrators may make claim (2). If a suit be commenced within the time, it is sufficient, although the verdict is not given till afterwards, for the delay beyond the time is in that case imputable to the law (3). If goods wrecked are *bona peritura*, the king or lord may sell them before the year and day are past (4). And the limitation does not extend to goods of the crown which are wrecked in the manor of a subject, because to them the maxim applies that *nullum tempus occurrit regi* (5). The rights of his majesty, and of those who claim under him, are in general reserved entire and unprejudiced by the modern statutes; but various legislative provisions have been introduced both with regard to the method of preserving property, and of remunerating those by whom the preservation is effected, which have, in modern practice, superseded the old law. Before these provisions are noticed, however, it is proper to remark, that in order to constitute wreck the goods must come to land; if they continue at sea, they are distinguished by the names of jetsam, flotsam, or ligan (6); the law in relation to which is in many respects the same as with regard to wreck. *Jetsam* are such goods as are cast into the sea, and there sink, and remain under water; *flotsam* is where they continue swimming on the surface of the waves; *ligan* is where they are sunk in the sea, but tied to a cork or buoy in order to be found again (7). These are also the king's, if no owner appears to claim them; but if he does appear, he is entitled to recover the possession: for even if they be cast overboard without any mark or buoy, in order to lighten the ship, the owner is not by this act of necessity considered to have renounced his property (8); much less can things ligan be supposed to be abandoned, since the owner has done all in

(1) 2 Inst. 168.
(2) Id. ibid.
(3) Id. ibid.
(4) 2 Inst. 168. But see as to ultimate right of owner by 12 Ann. st. 2. c. 18. s. 2. & 5.
(5) Id. ibid.
(6) 1 Bla. Com. 293. Com. Dig. tit. Wreck.
(7) 5 Rep. 106.
(8) Inst. 2. 1. s. 48.

his power to assert and retain his property. These three are therefore accounted so far a distinct thing from the former, that by the king's grant to a man of wrecks, things jetsam, flotsam, and ligan will not pass (1): so if a ship being in distress, all desert her, and any one comes alive to land, though the ship afterwards perishes, there will be no wreck (2): so if a ship be pursued by enemies, and all the mariners, to save themselves, desert the ship and come to land, and the ship is ransacked by the enemies, and afterwards put to sea, and there perishes, it will be no wreck (3); or if in a tempest the cable is cut, the anchor is not wreck (4). By the practice of the court of admiralty, goods are considered as derelict at sea, if they have been abandoned by the master and crew, without hope of recovery; and although an owner should afterwards appear, they are nevertheless considered as derelict; but a mere quitting of the ship, for the purpose of procuring assistance from the shore, is not an abandonment (5). If the owner should appear, the property will be restored to him; if not, it belongs, by the rule of all civilized countries, to the sovereign, and not to the person by whom it is found (6). A judicial sale of a vessel found at sea, and brought into port as derelict, under an order of the instance court of the admiralty, on the part of the salvors and claimant, without fraud, is available against the crown's right of seizure for a previous forfeiture, incurred by the ship having been guilty of a forfeitable offence against the revenue laws, although the crown was not a party to the proceeding in the admiralty court, except by the king's procurator general claiming the vessel as an admiralty droit; and although no division of droit, or no droit, was awarded, and the sale took place, *pendente lite*, under an interlocutory order (7). It was also held, that the crown should have claimed before the court, either as against the ship in the first instance, or subsequently against the proceeds of the sale, which were paid into the registry to answer claims under the order of sale, or have moved a prohibition (8). The practice of the instance court of admiralty is also stated to be, that

(1) 5 Rep. 108. But all provisions of the statute 3 Ed. 1. (being declaratory of the common law) relative to wreck, apply to flotsam, &c. id. ibid.

(2) 2 Inst. 167. Com. D. tit. Wreck, A.

(3) Id. ib.

(4) 2 Roll. 169.

(5) 1 Bla. C. 293.

(6) The Aquila, 1 Rob. Adm. Rep. 42, 3.

(7) The Attorney General v. Norstedt, in re of claim to ship Triton. 3 Price. Ex. Rep. 97.

(8) Id. ibid.

whenever a ship is brought in as derelict, she is arrested by the admiralty, and the warrant of the instance court for that arrest contains an order for general citation of all persons interested to come forward with their claims, which was held to be notice to all the world of all subsequent proceedings. (1)

A late statute contains provisions for transmitting an account of shipwrecked property to the Trinity House, for disposing of it, if perishable; for enabling persons to pass over the lands of others to save such property; for giving jurisdiction to the court of admiralty, and to the courts of record at Westminster, in cases of salvage of ships and goods performed between high and low water-mark: and for arresting foreign vessels, by which damage is done to British property (2). It provides that no lord of a manor, or other person claiming to be entitled to wreck of the sea, or goods found jetsam, flotsam, or lagan, shall be entitled to appropriate them to his own use, or otherwise to dispose of them, until he has caused a *report* of them in writing to be given to the deputy vice-admiral of that part of the coast where they have been stranded, wrecked, or found, or to his agent; or if there be no such deputy vice-admiral, or agent, residing within the distance of 50 miles, then to the corporation of the Deptford Trinity House; which report is to contain an accurate and a particular description of the wreck or goods found, and of the place or places and time or times where and when they may have been found, and of any marks thereon, and of such other particulars as may the better enable the owners to recover them; and also of the places where they are deposited, and may be found and examined by any persons claiming a right to such wreck or goods—nor until the full expiration of one whole year and a day after the delivery of the notice. And the deputy vice-admiral or agent is required, within 48 hours after receiving the report, to transmit a copy to the secretary of the Trinity House corporation, upon pain of forfeiting £50; and the secretary is to cause the account to be placed in some conspicuous situation for the inspection of persons claiming to inspect and examine it; but this act does not repeal or affect the statute 52 G. 3. c. 159. for charging foreign liquors and tobacco derelict, jetsam, flotsam, lagan, or wreck, brought or coming into Great Britain, with the duties payable on the importation of liquors and tobacco (3). When goods found or taken

(1) Id. 109, 110.
(2) 53 Geo. 3. c. 87.
(3) 53 Geo. 3. c 87. s. 2.

possession of by a lord of a manor, or person claiming to be entitled to wreck of the sea, or to goods found flotsam, jetsam, or lagan, or by his agent or servant, or by any vice admiral, or his deputy or agent, or any person acting by the authority of the statutes, are of so perishable a nature, or so much injured or damaged that they cannot be kept, they may, at the request of any persons interested or concerned in them, or in the saving and preserving of them, with the consent and approbation of a justice of the peace not so interested or concerned, and in the presence of such justice, or of some person specially appointed by him, be sold by public auction or private contract, as the justice may direct by some writing under his hand; which writing is to contain an accurate and particular account of the goods, and of any marks thereon, or other particulars belonging to them, and of the times and places of the finding and intended sale. The money raised by such sale (after defraying the reasonable expences of it, to be settled and allowed by the justice) is to be deposited in the hands of the lord of the manor, or other person who would have received the custody of the goods so sold, to abide and be subject to the claims of all persons, in like manner as the goods themselves. Provided also, that all persons required to transmit reports to the deputy vice-admiral of the finding of the goods, shall likewise transmit an account of the sale and the proceeds thereof; and the deputy vice-admiral is to forward such reports to the secretary of the Deptford Trinity House, under the same penalty for neglect as in the case of goods found and required to be reported (1). The 53 Geo. 3. also empowers the deputy vice-admiral of the part of the coast where any vessel is stranded or wrecked, or where any goods are cast on shore, and his agent, and also the owner or master of the vessel, and the owners of any such goods, or any part thereof, and any officer of the customs or excise, and other officer, and all persons whatsoever employed or acting in the aid of or assisting of any such deputy vice-admiral, officer, master, or owner as aforesaid, in the saving or recovering any such ship, or the cargoes, stores, tackle, or other articles belonging to the same, or the preserving the lives of the crew or persons belonging thereto, or of any wreck as aforesaid, to pass and repass with their horses, carts, carriages, or servants over any lands near to the part of the sea-coast where such vessel is so wrecked or stranded, or on which such

(1) 53 Geo. 3. c. 87. s. 3.

wreck shall be cast, without any interruption or obstruction by the owner or occupier thereof, for the purpose of rendering assistance in saving, recovering, and preserving any such ship, or goods, or stores, or any cables, anchors, spars, masts, cordage, or other tackle or articles belonging to the vessel; or for saving or otherwise assisting in preserving the lives of the crew, or of any persons on board of any such ship or vessel; or for the taking possession of, and securing for the benefit of the owners thereof, of any wreck or goods, or other things cast on shore or found near thereto, provided there shall be no road by which the parties may pass and repass with as much convenience and expedition as over such lands; and also to place any planks, timber, or any part of the wreck, or any goods or stores removed or saved from any such ship or vessel, or any other wreck or goods aforesaid, upon any such land, for a reasonable time, until they can be removed to some warehouse or safe place of deposit, making compensation to the occupier of such lands for any damage done by the means aforesaid; which compensation shall be a charge upon the wreck or goods in respect whereof the damage may be done, in like manner as salvage; and in case the parties cannot agree as to the amount thereof, then the same shall be ascertained and settled by two justices of the peace, or of a third person to be named by them, in such manner and within such times as the amount of salvage is directed to be ascertained and settled by the statute 49 G. 3. c. 122 (1). Any obstruction to the passing over or using land or premises on such an occasion, subjects the occupier to a penalty of £100. (2)

Of Salvage. The object of the legislative provisions upon this subject has been to secure shipwrecked property for the benefit of the merchant and the ship owner; to reward those who exert themselves for its preservation; and to deter evil disposed persons from taking advantage of a season of distress to commit plunder. For this end, the ministers of justice are required, by the statutes which we shall presently mention, to exert themselves in a case of shipwreck or distress at sea, and various provisions have been made with regard to salvage. The statute 27 Edw. 3. c. 13. enacts, that if any ship be lost on the shore, and the goods come to land, which cannot be called wreck, they shall be presently delivered to the merchants, paying only a reasonable reward to those that saved and preserved them. And it is said that by the

(1) 53 Geo. 3. c. 87. s. 4. (2) Ib.

common law, if any persons, except the sheriff, take goods so cast on shore, which are not legal wreck, the owners might have a commission to enquire and find them out, and compel them to make restitution (1). Indeed, at common law, a person who by his own labour preserved goods, which would otherwise be lost at *sea* (2), is entitled to a compensation for his trouble, and may either detain the property until such compensation has been made, or bring an action for it (3). A passenger on board a vessel is not entitled to make any claim for the ordinary assistance he may be enabled to render to a vessel in distress, it being the duty as well as the interest of all persons on board of every description to contribute their aid on such an occasion; a passenger, however, is not bound to remain on board the ship in the hour of danger, but may quit it if he has an opportunity of doing so; and where a vessel was in danger, and the captain and part of the crew having made their escape, a passenger, at the request of the rest of the crew, took the command and brought the ship safely into port, and the merits of the passenger in saving the ship were acknowledged by the owner in a letter to one of the underwriters, in which he expressed his desire to make him a compensation, the passenger was held entitled to sue the owner for salvage, and recovered to the amount of £400 (4). The court of admiralty, which has jurisdiction over the subject as well where the salvage is performed at sea, as also by the 53 Geo. 3. c. 87., concurrently with the courts of record at Westminster, between high and low water-mark (5), is in the habit of fixing the sum to be paid, of adjusting the proportions, and taking care of the property pending the suit; or if a sale be necessary, that court will direct a sale to be made and divide the proceeds between the salvors and proprietors, according to equity reason (6). In the case of a Danish ship deserted by its crew on the English coast, and brought into Harwich without any considerable danger, two-fifths were decreed for salvage (7). In the case of another ship, which having struck upon a rock lost her rudder, had her bottom beaten in, and been deserted by the crew, was weighed off with great peril by one set of persons, and placed in such a situation as to enable the master to bring

(1) 27 Edw. 3. c. 13. 1 Bla. Com. 293. Fitz. N.B. 112. 2 Inst. 168.

(2) Nicholson v. Chapman, 2 H. Bla. 257.

(3) Hartfort v. Jones, 1 Ld. Raym. 393. Baring v. Day, 8 East, 57.

(4) Newman v. Walters, 3 Bos. & Pul. 612.

(5) 53 Geo. 3. c. 87. s. 6.

(6) Abb. on Shipp. 408.

(7) The Tortura Quest. 4 Rob. Rep. 193.

off some bullion, but which afterwards sunk, and was again weighed up and brought into Harwich by another set of persons, two-thirds were decreed, and the amount distributed rateably among the first and second set of salvors (1). But the court will not allow a claim of salvage to be engrafted on the local ignorance of foreigners, who cannot be expected to be well acquainted with our coast, although a recompence must be made for the service actually rendered to them (2). The mode of proceeding in cases of this nature in the court of admiralty is extremely well adapted to the purposes of justice, especially where the property is valuable, and the salvors and proprietors are numerous.

But as the delay and expence necessarily incident to the proceedings of a high tribunal, sitting at a distance from the subject in contest, are frequently prejudicial to the parties, a more expeditious and summary proceeding for salvage before justices of the peace has been provided by the statutes passed for the security and preservation of goods wrecked and cast away at sea. The statute 12 Ann. st. 2. c. 18. provides that the sheriffs, justices of the peace of every county, or county of a city or town, and also all mayors, bailiffs, and other head officers of corporations and port towns near adjoining the sea, and all constables, headboroughs, tythingmen, and officers of the customs in such places, shall, upon application made to them on behalf of any commander or chief officer of a vessel in danger of being stranded or run on shore, command the constables of the several ports within her majesty's dominions nearest to the sea-coast where any such vessel shall be in danger, summon and call together as many men as shall be thought necessary for the preservation of the ship and cargo; and if there be any vessel, either man of war or merchant-ship, belonging to her majesty or any of her subjects, riding at anchor near the place of danger, the custom-house officers and constables are required to demand of the superior officers so riding at anchor assistance by their boats, and such hands as they can conveniently spare for the service and preservation of the vessel in distress; and in case such superior officer shall refuse and neglect to give such assistance he shall forfeit £100, to be recovered by the superior officer of the vessel in distress, together with costs of suit, in any

(1) The Jonge Pastinia Steyting. 5 Rob. A. R. 322.

(2) The Vrow Margorætha. 4 Rob. Adm. Rep. 103. and see as to the course of proceeding in the admiralty court, id. ibid. Abb. on Shipp. 411.

of her majesty's courts of record (1). Then, for the encouragement of persons who give their assistance to vessels in distress, the statute 12 Ann. enacts that the collectors of the customs, and the master or commanding officer of any vessels, and all others who shall act or be employed in the preservation of the ship or cargo, shall, within 30 days after the service performed, be paid a reasonable reward for the same by the commander, master, or other superior officer, mariners, or owners of the vessel, or by the merchant whose ship or goods are saved; and in default thereof, the ship or goods so saved shall remain in the custody of such officer of the customs, or his deputy, until all charges are paid; and the officer of the customs or his deputy, and the master or other officer of the vessel, and all others so employed, shall be reasonably gratified for their assistance and trouble, or good security given for that purpose, to the satisfaction of the several parties that are to receive the same; and that in case after such salvage, the commander or other superior officer, mariners, or owners of the vessel saved, or merchant whose goods are so saved, shall disagree with the officer of customs or his deputy, touching the remuneration to any of the persons so employed, it shall be lawful for the commander of the vessel saved, or the owner of the goods, or the merchant interested therein, and also for the officer of the customs, or his deputy, to nominate three of the neighbouring justices of the peace, who shall thereupon adjust the quantum of the monies or gratuities to be paid to the several persons acting or being employed in the salvage of the ship and goods; and such adjustments shall be binding to all parties, and shall be recoverable in an action at law to be brought in any of her majesty's courts of record by the respective persons to whom the same shall be allotted by the justices of the peace; and if no person appear to make his claim to the goods saved, the chief officer of the customs of the port nearest to the place where the vessel was in distress shall apply to three of the nearest justices of the peace, who shall put him or some other responsible person in possession of the goods, such justices of the peace taking an account in writing of the goods, to be signed by such officer of the customs; and if the goods be not legally claimed within 12 months by the rightful owner, public sale shall be made thereof, (and if the goods be perishable they shall be forthwith sold); and after all charges deducted, the residue of the money arising by the sale, with a fair and just account of the whole,

(1) 12 Ann. st. 2. c. 18. s. 1.

shall be transmitted to the exchequer, there to remain for the benefit of the rightful owner, who, upon affidavit or other proof made of his property, to the satisfaction of one of the barons, shall, upon his order, receive the same out of the exchequer (1). If any person not empowered by the officer of customs or his deputy, and the constables, shall enter or endeavour to enter on board the vessel in distress, without the leave or consent of the commander or other superior officer of the ship, or of the officer of the customs or his deputy, or of the constable, or one of them employed for the service and preservation of the ship; or if any person molest them in saving the vessel or goods, or endeavour to impede the saving of the property, or when such goods are saved, take out or deface the marks of them before they are taken down in the book provided for the purpose by the commander or ruling officer, and the first officer of the customs, such persons shall, within the space of 20 days, make double satisfaction to the party grieved, at the discretion of the two next justices of the peace, or in default thereof shall by such justices of the peace be sent to the next house of correction to be employed in hard labour for twelve months: and it is lawful for any commander or superior officer of the vessel in distress, or the officer of the customs, or constables on board the vessel, to repel by force any person who, without the leave or consent of the commander or superior officer, or the officer of the customs or his deputy, or the constables, shall pass on board the vessel in distress, and impede the officers in the preservation of it (2). The statute 26 Geo. 2. c. 19. makes the plundering or destroying of a vessel in distress, or obstructing the escape of any person from it, felony without benefit of clergy; but if goods or effects of small value stranded, lost, or cast on shore, are stolen without circumstances of cruelty, outrage, or violence, the offender may be prosecuted for petit larceny. On information before a justice of the peace of any part of the cargo or effects belonging to a vessel lost or stranded near the coast being unlawfully carried away or concealed in any place, or of some reasonable suspicion thereof, the magistrate is empowered to issue his search warrant (3). Wrecked goods offered to sale may be detained, and the offender committed by a justice of the peace till he has paid treble value. The same act also contains provisions for remunerating those by whom shipwrecked property is preserved.

(1) 12 Ann. st. 2. c. 18. s. 2.
(2) 12 Ann. st. 2. c. 18. s. 3.
(3) 26 Geo. 2. c. 19. s. 3.

It provides that in case any person not employed by the master, mariners, or owners, or other persons lawfully authorized in the salvage of the vessel or the cargo, or provision thereof, shall, in the absence of persons so employed or authorized, save any such ship and effects, and cause them to be carried for the benefit of the owners or proprietors into port, or to any adjoining custom-house or other place of safe custody, immediately giving notice thereof to some justice of the peace, magistrate, or custom-house or excise officer; or shall discover to any such magistrate or officer where any such goods or effects are wrongfully bought, sold, or concealed, he shall be entitled to a reasonable reward for such services, to be paid by the masters or owners, and to be adjusted in case of disagreement about the quantum, as directed by the statute 12 Anne, or in the manner pointed out for some particular cases by the 26 Geo. 2. (1) For the better ascertaining the salvage to be paid in pursuance of the 26 Geo. 2. and the statute 12 Ann., for more effectually putting these acts in execution, the justice of the peace, mayor, bailiff, collector of the customs, or chief officer nearest to the place where any ship or effects have been stranded or cast away, are required by the statute 26 Geo. 2. forthwith to give public notice for a meeting to be held as soon as possible of the sheriff or his deputy, the justices of the peace, mayors, or other chief magistrates of towns corporate, coroners, and commissioners of the land tax, or any five or more of them, who are required and empowered to give aid in the execution of the statutes, and to employ proper persons for saving ships in distress, and also to examine persons upon oath touching the same or the salvage thereof, and to adjust the quantum of salvage, and distribute it among the persons concerned, in case of disagreement; and every such sheriff, justice of the peace, mayor, chief magistrate, coroner, lord of a manor, under sheriff, or commissioner of the land tax, attending and acting at such meeting, shall be paid four shillings a day for his expences of attending, out of the effects saved by their care or direction (2). If the charges and rewards for salvage directed to be paid by the 12 Ann. st. 2. and 26 Geo. 2. be not fully paid, or sufficient security given for them within forty days after the services are performed, it is lawful for the officer of the customs concerned in the salvage to borrow or raise money sufficient to satisfy such charges and

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(1) 26 Geo. 2. c. 19. s. 5. (2) 26 Geo. 2. c. 19. s. 6.

rewards by bills of sale under his hand and seal of the property saved, redeemable nevertheless on payment of the principal sum and interest at 4 *per cent.* (1) But where the commander of a stranded vessel had, by the recommendation of a pilot who came to his assistance, sent to a person on shore, till then a stranger to him, to send all the help that was necessary, which he accordingly did, and under his direction (but also under the inspection of custom-house officers in attendance), the goods were brought on shore and housed under the joint locks of himself and the collector, the person so employed was holden to be the agent of the owners, and therefore not within the provisions of the 12 Ann. st. 2 c. 18. s. 2. for regulating the quantum of salvage by three justices of the peace; which statute only applies to cases where application is made by the owners, &c. to certain public officers named, and the salvage is made under their orders (2). Another statute however provides, that if the commander, or other superior officer, mariners, or owners of the ship so saved, or the merchant, or other person whose goods shall be saved, or their agents, shall disagree with the salvors as to the quantum of the gratuity, the commander of the ship, or the owner of the goods, or the merchant interested, or their agents, and the salvors, may nominate three of the neighbouring justices of the peace to ascertain it; and if the parties disagree in the nomination, any one of the parties may apply to one such justice, who may nominate two others, and the three may make the adjustment. (3)

The duty of persons by whom anchors or any other property belonging to a vessel may be found, is further provided for by the stat. 49 Geo. 3. c. 122. This stat. enacts, that every pilot, boatman, hoveller, and other person who shall take up any anchors, cables, or merchandize that may have been parted with by any vessel, and weighed, swept for, or taken possession of by such person, shall send a report in writing of the articles so found, and stating the marks if any thereon, and also an accurate and a particular description of the bearings, distances, and situations, and time when and where the same were found, to a deputy vice admiral or his agent at or near the place where he shall first arrive with such articles within forty-eight hours after

(1) 26 Geo. 2. c. 19. s. 7. continued for seven years by 53 Geo. 3. c. 87.
(2) Baring v. Day, 8 East, 57.
(3) 48 Geo. 3. c. 130. s. 22.

his arrival, or before he shall leave the port, if he quit it before that times expires; and shall also, within the same period, deliver the articles so found into a proper warehouse, or such other place as the vice admiral of each county shall appoint for safe custody, until the same shall be claimed by the owner or his agent, and the salvage, together with such other charges and expences as are by the 49 Geo. 3. directed to be paid in respect of such articles, shall be paid or security given for the payment of it to the satisfaction of the salvor; and every pilot, boatman, hoveller, or other person who shall wilfully and fraudulently keep possession of, or retain or conceal or secrete any anchors or cables so found, weighed, swept for, or taken possession of, and shall not report and deliver them at the proper warehouse or other place, will incur the guilt of knowingly receiving stolen goods, and suffer punishment as if the goods had been stolen on shore (1). The deputy vice admiral or his agent is to send the report or a copy of it to the secretary of the Trinity House corporation, who is to place it in some conspicuous situation, for the inspection of persons claiming to examine it (2). This report is to be transmitted within two days if the articles are of the value of £20, but unless the articles are of that value, the report need not be forwarded (3). The deputy vice admiral or his agent may also seize such articles as have not been forwarded to him, and is required to keep them and make a report to the Trinity House; and if he seizes without previous information, he is to have one third of the value, if in pursuance of information the third is to be divided between him and the informer (4). If any articles so reported and delivered into the warehouse be not claimed within a year and a day after the report has been transmitted to the Deptford Trinity House, the same shall be sold, and a certificate of the sale delivered to the purchaser under the directions of the high court of admiralty, and the monies arising from the sale be applied in the manner directed by the 12 Ann. stat. 2.; and if they have been seized by the deputy vice admiral or his agent, then the deputy vice admiral or agent seizing, and the person who has given such information as may have led to the seizure (if any such information has been given), shall be equally entitled to the salvage allowed by the high court of admiralty to salvors in the case of unclaimed property (5).

(1) 49 Geo. 3. c. 122. s. 1. continued for 7 years by 53 Geo. 3. c. 87.

(2) 49 Geo. 3. c. 122. s. 2.

(3) 49 Geo. 3. c. 122. s. 3.

(4) 49 Geo. 3. c. 122. s. 4. 6.

(5) 49 Geo. 3. c. 122. s. 7.

If the salvors, of any such articles or any goods so found weighed, swept for, or taken possession of as aforesaid, and so lodged and reported as aforesaid, and the owner or his agent, cannot agree in respect of the amount of salvage to be paid for or in respect of the same or the value thereof (as the case may be), the matter in difference is to be determined by two justices of the peace residing near the place where the articles are deposited, and such justices shall begin to proceed in their inquiry as to such matters in dispute within forty-eight hours after such difference shall be referred to them for their determination thereof; and if they cannot agree respecting the same, then it shall be lawful for them to nominate any third person conversant in maritime affairs, at their option, who shall ascertain the amount of the salvage to be paid or the value thereof, as the case may be, within forty-eight hours after he shall have been so nominated as aforesaid, and the said justices and such third person so nominated as aforesaid, shall have full power and authority, whenever they see occasion, to examine the parties or their witnesses upon oath. (1)

Cinque Ports. Besides the provisions already mentioned, which do not extend to the cinque ports, there are others which relate to the *cinque ports* only. By the statute 3 Geo. 1. c. 13. the lord warden was authorized to appoint commissioners, of whom any one was empowered to adjust the salvage to be paid to persons bringing on shore cables or anchors from which any ship had been forced by stress of weather (2). The stat. 26 Geo. 2. c. 19. also provides that the lord warden of the cinque portsand lieutenant of Dover castle, the deputy warden of the cinque ports, and the judge official and commissary of the court of admiralty of the cinque ports, two ancient towns and the members thereof, shall be the persons to put in execution within their limits all the powers given by the 26 Geo. 2. 12 Ann. stat. 2. and 4 Geo. 1. in the same manner as any justice of the peace or other persons are authorized to do in other places (3). And by an act passed in the forty-eighth year of his late majesty's reign, in which the act of Geo. 1. before alluded to is recited, and in which it is also recited that it is found expedient that the commissioners of salvage appointed by the lord warden should have further powers granted them for the purpose of deciding in all other cases of services rendered to shipping, not provided for by the acts of Geo. 1. and

(1) 49 Geo. 3. 122. s. 8.
(2) 3 Geo. 1. c. 13. s. 6. Abb. on Ship. 422.
(3) 26 Geo. 2. c. 19. s. 10. cited Abb. on Ship. 422.

Geo. 2., it is enacted, that it shall and may be lawful for the lord warden of the cinque ports for the time being, to nominate and appoint, by any instrument under his hand and seal, three or more substantial persons in each of the cinque ports, two ancient towns and their members, to adjust and determine any difference relative to salvage which may arise between the master of any vessel, and the person or persons bringing such cables and anchors ashore, and in case any vessel shall be either forced or cut from her cables and anchors by extremity of weather, or by any other accident, and leave the same in any roadstead or place within the jurisdiction of the cinque ports, two ancient towns and their members, and the salvage cannot be adjusted between the persons concerned, then the same shall be determined by any three or more of the said persons, so to be appointed, within the space of twenty-four hours after such difference has been referred to them for their determination (1). By this new act also, the commissioners are authorized to decide on all claims made by any person whatsoever, for services of any sort or description rendered to any vessel, as well for carrying out anchors, cables, or stores, from any place within the jurisdiction, as for conducting vessels from the Downs and other bays and roadsteads on the coast of Kent, Sussex, and Essex, and from the island of Thanet, or from the sea or any place to Ramsgate, Dover, or any other place within the jurisdiction, or for the saving or preserving within the jurisdiction, any goods or merchandizes wrecked, stranded, or cast away from any vessel, the master or owners thereof or their agent being present at the place where the commissioners are sitting, and this whether the ship shall have been in distress or not (2). But no commissioner can act for any port or place except that in which he is resident (3). Either party may, within twenty-four hours after the award, declare his desire of obtaining the judgment of some competent court of admiralty with respect to the salvage or compensation, in which case the salvors must forthwith declare whether they will proceed in the admiralty of England, or in the admiralty of the cinque ports, and must proceed by monition within twenty days from the date of the award; and the commissioners are to permit the ship and cargo to depart on their voyage, or deliver the goods to their owners, taking bail in double the amount of the sum awarded (4). By this act also, anchors, cables, and other ship's

(1) 48 Geo. 3. c. 130. s. 1.
(2) 48 Geo. 3. c. 130. s. 2.
(3) 48 Geo. 3. c. 130. s. 4.
(4) 48 Geo. 3. c. 130. s. 5.

stores, and materials, and merchandize, and marine stores, found by boatmen and others, are to be delivered at Ramsgate, Deal, or Dover, or such other place of public deposit as shall be declared by the lord warden (1); and the officers of the lord warden may seize such articles either at sea or on shore. (2)

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(1) 48 Geo. 3. c. 130. s. 7, 8.  (2) 48 Geo. 3. c. 130. s. 9.

# CHAP. VII.

## *Of Piracy.*

THE crime of *piracy*, or the commission of acts of robbery and depredation on the high seas without authority from any prince or state, is an offence against the universal law of society a pirate being, according to Sir Edward Coke, *hostis humani generis*. At common law, those offences only appear to have been included within the term piracy, which, if committed on land, would have amounted to felony (1). But by the marine law, no taking of property is necessary to complete the crime; and by statute, various other offences are also made piracy. The statute 11 & 12 W. 3. c. 7. enacts, that if any of his majesty's natural-born subjects or denizens of this kingdom shall commit any piracy or robbery, or any act of hostility against others his majesty's subjects upon the sea, under colour of any commission (2) from any foreign prince or state, or pretence of authority from any person whatsoever, such offender and offenders and every of them shall be deemed, adjudged, and taken to be pirates, felons, and robbers, and suffer death accordingly (3). The act also provides, that if any commander or master of a ship, or any seaman or mariner, shall, in any place where the admiral has jurisdiction, betray his trust and turn pirate, enemy or rebel, and piratically and feloniously run away with his or their ship or ships, or any barge, boat, ordnance, ammunition, goods or merchandize, or yield them voluntarily to any pirate, or shall bring any seducing messages from any pirate, enemy or rebel, or consult, combine, or confederate with, or endeavour to corrupt any commander, master, officer or mariner to yield up or run away with any ship or goods, or turn pirate, or go over to pirates, or if any person shall lay violent hands on his com-

(1) Hawk, B. 1. c. 37. s. 4.
(2) See post.
(3) 11 & 12 W. 3. c. 7. s. 8.

mander to hinder him from fighting in defence of his ship and goods committed to his trust, or shall confine his master, or make or endeavour to make a revolt in the ship, he shall be deemed a pirate, felon, and robber (1). Every person also who shall, either by land or on the sea, knowingly or wittingly set forth any pirate, or assist, maintain, procure, command or advise any person to commit any piracy or robbery on the sea, is rendered liable by the same statute, on such piracy or robbery being afterwards committed, to be adjudged accessary thereto; and further, after any piracy or robbery is committed, every person who knowingly receives, entertains, or conceals the felon or his booty, is liable to be deemed an accessary (2). The statute 8 Geo. 1. c. 24. further enacts, that if any commander or master of a vessel, or any other person, shall in anywise trade with any pirate by truck, barter, exchange, or in any other manner, or shall furnish any pirate, felon, or robber upon the sea with any ammunition, provision, or stores of any kind, or shall fit out any vessel knowingly and with a design to trade with or supply, or correspond with any pirate, felon, or robber upon the seas, knowing him to be guilty, the offender shall in every case be deemed guilty of piracy, felony, and robbery (3). The statute 18 Geo. 2. c. 30. provides that all persons, being natural-born subjects or denizens of his majesty, who during war have committed or shall commit any hostilities upon the sea, or in any haven, river, creek, or place within the jurisdiction of the admiralty, against his majesty's subjects, by virtue or under colour of a commission from any of his majesty's enemies, or have been or shall be any other ways adherent or giving aid or comfort to the king's enemies upon the sea, or in any place within the jurisdiction of the admiralty, may be tried as pirates, felons, and robbers in the court of admiralty, on shipboard, or upon the land, in the same manner as persons guilty of piracy, felony, and robbery are by that act directed to be tried; and being convicted, shall suffer the punishment awarded by the statute 11 W. 3. c. 7. The act did not protect any person who should not be tried under it from being tried for high treason, but if a person be tried for piracy he cannot be indicted for high treason in respect of the same offence (4). If mariners seize the captain of a vessel, put him on shore, and carry away the ship, the

(1) 11 & 12 W. 3. c. 7. s. 9.
(2) 11 & 12 W. 3. c. 7. s. 10.
(3) 8 Geo. 1. c. 24. made perpetual by 2 Geo. 2. c. 28. s. 7.
(4) 18 Geo. 2. c. 3 .s. 2, 3.

offence is piracy (1). But where the master of a vessel loaded goods on board at the port of Rotterdam, consigned for Malaga, and caused them to be insured, but afterwards brought the goods on shore in England, where the ship was burned, and then the master protested both the ship and cargo as burned, with intent to defraud the owners and insurers, his conduct was holden to be merely a breach of trust and not felony (2). Attacks made upon the property of a foreign nation in the course of war, under the authority of a constituted government, are not to be treated as piratical (3). Thus, where a Bristol merchant-ship, in the reign of Charles the second, was taken by the Algerines, and afterwards driven on the coast of Ireland, with some Turks and renegadoes on board, Sir Leoline Jenkins, then judge of the court of admiralty, certified to the king to the following effect: that as to the Moors and Turks who were so by birth, and were found on board the ship, his opinion was, that since the government of Algiers was recognized, as well by several treaties of peace and declarations of war as by the establishment of trade and even of consuls resident among them, by so many princes and states, and particularly by his majesty, they could not be proceeded against as pirates or sea-rovers acting without commission, but were to have the same privileges as enemies in an open war, and must be received to their ransom by exchange or otherwise, the ordering of which belonged in that case to the lord high admiral (4). A question was raised in a late case with regard to the legality of the capture of a British ship which had been taken in the course of a voyage from Saffee to Lisbon by an Algerine corsair, and sold by the Dey of Algiers to a merchant of Minorca, and by him disposed of, on the surrender of the island of Minorca to the British arms, to the then holder, a merchant of London. On coming into the port of London, a warrant had been applied for to arrest this ship on the part of the former British proprietor, but the court refused a warrant, and directed a monition to issue, calling on the possessor to show cause why she should not be restored to the former British owner. The following observations were then made by Sir William Scott: "This ship appears to have been taken by the Algerines, and it is argued that the Algerines are to be considered in this act as pirates, and that no legal conversion of

(1) 2 East, P. C. 796.

(2) Mason's case, 8 Mod. 74. 2 East, P. C. 796. and see Molloy, b. 1. c. 4. s. 17.

(3) Vide 11 & 12 W. 3. c. 7. s. 8. ante.

(4) 2 Sir L. Jenk. 791. Bac. Abr. tit. Piracy.

property can be derived from their piratical seizure. Certain it is, that the African states were so considered many years ago, but they have long acquired the character of established governments, with whom we have regular treaties, acknowledging and confirming to them the relations of legal states. So long ago, continued the learned judge, as the time of Charles II., Molloy speaks of them in language, which though sufficiently quaint, expresses the true character in which they were considered in his time. Pirates that have reduced themselves, says Molloy, into a government or state, as those of Algiers, Sally, Tripoli, Tunis, and the like, some do conceive, ought not to obtain the rights or solemnities of war as other towns or places, for though they acknowledge the supremacy of the Porte, yet all its power cannot impose upon them more than their own wills voluntarily consent to. The famous Carthage, having yielded to the victorious Scipio, did in some respect continue, and began to raise up her drooping towers, till the knowing Cato gave counsel for the total extirpation; out of the ruins of which arose Tunis, the revenging ghost of that famous city, who now what open hostility denied, by thieving and piracy continue, as stinking elders spring from those places where noble oaks have been felled; and in their art are become such masters, and to that degree, as to disturb the mightiest nations on the western empire; and though the same is small in bigness yet it is great in mischief, the consideration of which put fire into the breast of the aged Lewis IX. to burn up this nest of wasps, who having equipped out a fleet, in his way for Palestine resolved to besiege it, whereupon a council of war being called, the question was, whether the same should be summoned, and carried it should not, for it was not fit the solemn ceremonies of war should be lavished away on a company of thieves and pirates. Notwithstanding this, Tunis and Tripoli, and their sister Algier, do at this day (said Molloy) although nests of pirates, obtain the right of legation. So that, though indeed pirates, yet having acquired the reputation of a government, they cannot properly be esteemed pirates but enemies. Sir Wm. Scott then observed, that although their notions of the justice to be observed between nations differ from those which we entertain, we do not on that account venture to call in question their public acts. As to the *mode* of confiscation which may have taken place on this vessel, whether by formal sentence or not, said the learned judge, we must presume it was done regularly in their way, and according to the established custom of that part of the world. That the act of

capture and condemnation was not a mere private act of depredation was evident from this circumstance, that the Dey himself appeared to have been the owner of the capturing vessel, at least he intervened, to guarantee the transfer of the ship in question to the Spanish purchaser. There might perhaps, it was observed, be cause of confiscation, according to their notions, for some infringement of the regulations of treaty, as it is by the law of treaty only that these nations hold themselves bound, conceiving (as some other people have erroneously imagined) that there is no law of nations but that which is derived from positive compact and convention. Had there been any demand for justice in that country on the part of the owners, and the Dey had refused to hear their complaints, there would have been a more reasonable ground to induce the court to look into the transaction; but no such application appeared to have been made. The transfer also in the first instance had passed in a solemn manner before the public officer of the Spanish government, the Spanish consul; and subsequently the property was transferred to the British merchant, under the public sanction of the judge of the vice admiralty court of Minorca. Without considering, therefore, what rule would have been applied to the case of a *bona fide* purchase from a piratical captor, the learned judge dismissed the party, and decreed the ship to be delivered to the British purchaser (1). No government, therefore, if recognized as such, nor any individuals acting by virtue of a commission from it, can, in point of law, be guilty of *piracy*, except that under the statute of William the third to which we have already alluded, one British subject may be indicted as a pirate for making an attack upon another, a provision introduced during the revolution, in consequence of doubts entertained by many eminent civilians, whether persons who had captured English vessels under the authority of commissions granted by James II. at his court at St. Germains, after his abdication of the throne of England, could be deemed pirates, the grantor still having, as was contended, the right of war in him. And though the authority is deficient, as where the letters of reprisal have been called in by proclamation and superseded under the great seal, yet if the capture be fairly made, and the property brought in for adjudication, in the supposed execution of a national commission, and not *animo deprædandi*, it will

(1) The Helena, 4 Rob. Adm. Rep. 3. See Dudley v. Folliott, 3 Term Rep. 584. Ogden v. Folliott, id. 726.

not be treated as piratical (1). If, however, a man having a commission against one nation, intentionally commit depredations upon another with which the king is not at war, the guilt of piracy is incurred (2). According to some writers, a commission is necessary to legalize the seizure; but the better opinion seems to be, that it is sufficient to shew that war has been publicly denounced, or that hostilities have been commenced against the power whose property is invaded (3). One enemy, says Lord Coke, cannot be a felon for taking the goods of another enemy (4). But without either a public commission or a formal authorization from some government, no adventure of conquest can legally be undertaken (5). Where a mob of rioters took possession of a ship laden with corn, which arrived at Elly harbour in Ireland, and took the government of her from the captain and crew, and weighed her anchor, by which she drove on a reef of rocks, where she was stranded, and would not leave the vessel till they had obliged the captain to sell all the corn, except about ten tons, at a certain rate; this was holden to be a piratical seizure. (6)

By the ancient common law, piracy, if committed by a subject, was held to be a species of treason, being contrary to his natural allegiance, and by an alien, to be felony only; but now, since the statute of treasons 25 Edw. 3. c. 2., it is only felony in a subject. The offence, being done upon the sea, was formerly only triable in the admiralty court, which proceeds by the rules of the civil law, but it may now be tried, like other offences committed at sea, under a special commission, by virtue of the stat. 28 Hen. 8. c. 15. It may still, however, be tried under an admiralty commission, by virtue of the stat. 11 & 12 W. 3. c. 7., which was passed to prevent the trouble, expence, and delay of bringing offenders from remote places, to be tried under the stat. 28 Hen. 8. The stat. of Henry 8. is referred to as appointing the mode of trial by stat. 11 & 12 W. 3. c. 7. s.8. 10. 14., 8 Geo. 1. c. 24., and the other statutes of piracy. But the stat. 28 H. 8. extends not to offences committed in any river, creek,

(1) Moll. b.1. c.4. s. 34. c. 2. s. 24. 1 vol. 60. 100. 2 Woodd. Vin. Lect. 426.

(2) Molloy, b. 2. c. 2. s. 23, 24. cited 1 Rol. Abr. 530. Moor. 776. 1 Sir L. Jenk. 94. 2 Woodd. Vin. Lect. 422.

(3) 2 Woodd. Vin. Lect. 432. 4 Inst. 152. 3 Bulstr. 28. Oom v. Bruce, 12 East. 225.

(4) 4 Inst. 154.

(5) The Leander, 1 Rob. A. R. 35.

(6) Nesbitt v. Lushington, 4 T. R. 783.

or port within the body of a county, because they are cognizable by the common law (1). The king of England has not only empire and sovereignty over the British seas for the punishment of piracy, but, in concurrence with other princes and states, an undoubted jurisdiction and power in the most remote parts of the world. If any person, therefore, whether native or foreigner, with whose country we are in amity, be robbed or spoiled in the narrow or other seas, whether the Mediterranean, Atlantic, Southern, or any branches thereof, either on this or the other side of the line, it is piracy (2). About the time of the treaty of Nimeguen, the captain of a French merchant ship, having put into a port in Ireland, was accused by his crew of robberies on the seas, and fled. His ship and goods were confiscated, as having belonged to pirates. The French ambassador presented memorials, requiring the cause to be remanded to the natural judge, as was pretended, in France. But the king and his council finally determined that we had jurisdiction to confiscate the ship and goods, and to try capitally the person himself had he been apprehended, the mode of *removing* contended for being quite disused among princes; and as every man by the usage of our European nations is justiciable in the place where the crime is committed, so are pirates, being reputed to be out of the protection of all laws and privileges, to be tried in what place soever they are taken. (3)

A piratical seizure does not alter the property in the thing taken. Goods taken by pirates remain the property of the original owners although sold here, unless the sale take place in market overt (4). Such goods therefore the king cannot grant, for by an express statute, the merchant robbed on the seas, whether he be privy or stranger, shall be received to prove by his chart or cocket, or by other lawful proof of merchants, &c. that the goods belong to him, and then the goods shall be delivered without any suit at common law (5). But it was holden by all the judges in the reign of Richard III., that any foreigner who sues upon this statute must prove that at the time of the capture his

(1) 28 H. 8. c. 15. 11&12 W. 3. c. 7. 32 Geo. 2. c. 25. 3 Inst. 113. 4 Inst. 137. Hawk. P.C. b. 1. c. 37. sec. 12. to 17. 2 East. P. C. 803.

(2) Sir C. Hodges' Charge,—Hawk. P.C. B. 1. c. 37. s. 1, 2.

(3) 2 Sir L. Jenk. 714. 2 Wood, 427. Bac. Abr. tit. Piracy.

(4) Bac. Abr. Piracy. Jenk. 165. Godb. 193. 3 Bulstr. 29. Cro. Eliz. 685. 2 Wood. 429.

(5) 27 Edw. 3. stat. 2. c. 13.

own sovereign and the sovereign of the captor were in mutual amity, and also that his own sovereign was in amity with our king; for in our municipal law books it is generally and indiscriminately asserted, that piracy cannot be committed by the subjects of states at amity. (1)

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(1) Bac. Abr. tit. Piracy. 4 Inst. 154. 3 Bulstr. 28.

## CHAP. VIII.

### *Of Highways, Canals, and Railways, and Tolls incident thereto.*

HAVING thus in the preceding chapters, according to the original division of the subject, considered those municipal regulations which principally affect *foreign* commerce, we now proceed to examine those municipal regulations of a public nature which more immediately relate to *inland* trade.

In considering the laws relating to the *inland* trade, those regulations which affect the *conveyance* of goods from place to place by land or water carriage—by roads, canals, or railways, naturally claim our first attention. Various provisions were made by the common law, which still continue to exist, with regard to the preservation and maintenance of public roads or highways. A highway is so called because it is common to all the king's subjects. A way to a parish church, or to the common fields of a town, or to a private house, or perhaps to a village which terminates there, and is for the benefit of the particular inhabitants of such parish, house, or village, may be termed a private way, but not a highway, because the benefit of it belongs not to all the king's subjects, but only to some particular persons (1). The right of way only is dedicated to the public, for the freehold and all the profits belong to the owner of the soil, together with the trees upon it and mines under it (2). If the owner of the soil throw open a passage, although it is not a thoroughfare, without marking by any visible distinction that he means to preserve his rights over it, or excluding persons from passing through it by positive prohibition, he is presumed to have dedicated it to the public (3), and a continued enjoyment of the way by the public for a consi-

I. Of Highways, and Tolls incident thereto.

(1) Hawk. b. 1. c. 76. s. 1. The King v. Severn and Wye Railway Comp. 2 Barn. and Ald. 648, 9.

(2) Sir John Lade v. Shepherd, 2 Stra. 1004. 2 Inst. 705. 1 Burr. 143. Harrison v. Parker, 6 East, 154.

(3) Rex v. Lloyd, 1 Campb. 260. Roberts v. Carr, Lethbrige v. Withe, 1 Campb. 262, 3. Rex v. Barr, 4 Campb. 16.

derable space of time, as for six or eight years, affords a presumption of its being a highway (1). The general charge of repairing all highways is imposed by the common law on the occupiers of the lands in the parish in which they are, but particular individuals may be burthened with this charge in two cases, viz. in respect of an inclosure of the adjoining land, or by prescription (2); and the tenants of the lands adjoining are bound by the general law to scour their ditches and maintain their fences (3). Where a local turnpike act, after empowering the trustees under it to take tolls, directed that the roads should from time to time be repaired by the trustees out of the money arising by virtue of the act, the court of king's bench decided that the tolls constituted only an auxiliary fund in the hands of the trustees, and that the inhabitants of the township where the road was situate, who by prescription were bound to repair all roads within it, were liable to be indicted for the non-repair of the roads (4). But the provisions chiefly of use in practice with regard to highways, are those introduced by the acts of parliament, which we shall now proceed to consider.

The principal *statutes* for the regulation of highways are the 13 Geo. 3. c. 78. and 13 Geo. 3. c. 84., the former of which relates to highways in general, the latter to turnpike roads only. The former act, in order to provide against the inconveniences that would arise from an improper use of the roads, contains provisions with regard to the breadth of the wheels, the number of horses, and the loads for certain carriages, with exceptions as to carriages for timber, &c., and others to be allowed of at the discretion of the justices, with regard to carriages drawn up steep hills, or through snow and ice (5). To prevent accidents from the

(1) Trustees of the Rugby Charity v. Merryweather, 11 East. 375. See also on this point Woodyer v. Hadden, 5 Taunt 125. Rex v. Barr, 4 Campb. 16.

(2) Hawk. b. 1. c. 76. s. 5. 1 Rol. Abr. 890. Rex v. Sheffield, 2 T. R. 111. Rex. v. Flecknow, 1 Burr. 461. Rex v. Cottingham, 6 T. R. 22. Com. Dig. Chimin, A. 4. Bac. Ab. Highway, F. Rex v. Staughton, 2 Saund. 159, b. note.

(3) Hawk. b. 1. c. 76. s. 5. 2 T. R. 232, 4.

(4) The King v. the Inhabitants of Netherthong, 2 Barn. and Ald. 179. Rex v. St. George's, Hanover Square, 3 Campb. 222. Vide 13 Geo. 3. c. 84. s. 33.

(5) 13 Geo. 3. c. 78. s. 55. to 58. and 6 Geo. 1. c. 6. as to loads of meal in L. and W. and 18 G. 2. c. 33. Burn, s. 10. And as to driving carriages on horse and foot causeways, see 13 G. 3. c. 78. s. 52. and as to the old law, see Com Dig. Chimin, A: 3. 22 Car. 2. c. 10. Com. Dig. Chimin, C. 10.

misconduct of drivers, a summary mode of punishment by justices of the peace is provided against drivers riding on carriages without any persons to guide the reins, or damaging other carriages on the road, or not making way for loaded vehicles, or driving carriages without the owner's name (1). The neglect to remove *trees*, to preserve hedges, to drain watercourses, or to take away stones, &c. obstructing a highway, and after notice from the surveyor, is punishable, in general, with ten shillings penalty, to be recovered before a magistrate (2). Any one at common law may remove a nuisance to a highway (3). The surveyor may take the rubbish or refuse stones of a quarry for the *repair* of the road; and may also with the leave of the owner and of a justice of the peace, procure materials from a waste, river or brook; or if they cannot be had in such a place, from the inclosed lands in the neighbourhood (4). In the construction of those clauses in the highway act which authorize the surveyors to take and carry the refuse stones from quarries for the repair of the highways, making satisfaction for damage done to the land of any person by carrying away the same, which direct that if the surveyors cannot agree with the land owners upon the amount of such satisfaction, it shall be settled and ascertained by an order of justices; and further provide, that no plaintiff shall recover for any trespass, if a tender of sufficient amends has been made before action brought; and that in case no such tender is made, the defendant by leave of the court, before issue joined, may pay money into court; it was held, that the surveyors having broken a new way over the plaintiff's land, in order to carry such materials, in a case where an old but circuitous road existed before, and having, after the damage done, and after an action brought against them, paid money into court by way of amends, the sufficiency of such amends could not be questioned at nisi prius, the statute having referred the quantum of amends, if not agreed upon, to the decision of justices of the peace. But it seems to be competent to the plaintiff in such action to shew that the making of such new road over his land was maliciously or wantonly done by the surveyors, and not for the necessary or convenient carriage of the materials over the land for the purposes of the act, and in such case he would not be concluded by the amends ten-

(1) 13 Geo. 3. c. 78. s. 60. and see 30 Geo. 2. c. 22. s. 7. 12. to 15. 24 Geo. 2. c. 43. 1 Geo. 1. st. 2. c. 57. as to London.

(2) 13 Geo. 3. c. 78. s. 6, 7. 13. 8. 14. 9. 10. 63. 12.

(3) Hawk. B. 1. c. 76. s. 48. 61 Lodie v. Arnold, 2 Salk. 458. 3 Lev. 92.

(4) 13 Geo. 3. c. 78. s. 29.

dered or paid into court (1). This statute, 13 Geo. 3. c. 78., also requires the surveyor from time to time to give information upon oath of all such highways, and of all bridges, causeways, or pavements upon such highways, as are out of repair, and ought to be repaired by any person or persons, bodies politic or corporate. by reason of any grant, tenure, limitation, or appointment of any charitable gift, or otherwise howsoever; which justices are to limit a time for the repair, of which notice is to be given by the surveyor to the persons chargeable; and if the repairs be not effectually made within the time limited, the justices are to present such highways, bridges, causeways, or pavements so out of repair, together with the person or persons, bodies politic or corporate liable to repair them, at the next general quarter sessions for the limit within which the highway is; and the justices, if they see cause, may direct the prosecution to be carried on at the general expence of the limit, and to be paid for out of the general rates (2). The provisions in the general highway act, with regard to the proportion of the statute labour to be performed on the highway, and the composition to be paid in lieu of such labour, have been altered by the stat. 34 Geo. 3. c. 74. and 44 Geo. 3. c. 52. (3). The surveyors of the highways are appointed by the magistrates at their special sessions (4). If the justices, upon proper lists returned to them, omit to appoint a surveyor at their first special sessions after the Michaelmas quarter sessions, as directed by the statute, they are bound to make such appointment at a subsequent special sessions (5); and if the list of persons returned to the justices do not contain the names of persons whom the justices think qualified, they may appoint any other persons of the parish who are properly qualified. The lists are directed by the act only for the purpose of assisting the magistrates, who in many instances, perhaps, might not know a sufficient number of persons adapted for the office. If, indeed, the magistrates act corruptly, they may be punished for an abuse of their discretionary power (6). The other provisions

(1) Boyfield v. Porter, 13 East. 200.

(2) 13 Geo. 3. c. 78. s. 23. Justices to enquire into employment of land left for repair, &c. by s. 51. Burn J. tit. Highw. s. 4.

(3) 34 Geo. 3. c. 74. 13 Geo. 3. c. 78. s. 30. Militia exempt. 26 Geo. 3. c. 107. s. 130. 44 Geo. 3. c. 52. s. 2. 34 Geo. 3. c. 74. s. 6. 13 Geo. 3. c. 78. s. 40. 41, 2. 4. Burn J. Highway, sec. 5.

(4) 13 Geo. 3. c. 78. s. 1, 2, 3, 4, 5. 48. 53, 54. 70.

(5) The King v. the Justices of Denbighshire, 4 East, 142.; and see as to the special sessions to be holden for highways, 13 Geo. 3. c. 78. s. 1. s. 61.

(6) The King v. Baldwin, 7 T.R. 169.

of importance introduced by act of parliament with regard to highways, relate to the putting up and maintaining of direction posts, blocks, milestones, watermarks, and battlements of bridges (1), to the breadth, widening, changing, and diverting of highways (2), to the making of assessments by the justices at their special sessions (3), to the penalties for obstructing the execution of the statute (4), to the penalty on the surveyor for neglect of duty (5), to the surveyor's accounts (6), to the presentment or indictment of highways in general (7), to the levying of assessments, fines, and forfeitures (8). The statutory provisions have not in general superseded the rights and liabilities that existed at common law (9), for which, however, together with a fuller exposition of the statutes themselves than could be comprised in this work, the reader is referred to the digests and authorities in which the subject is treated of and discussed (10).

The *turnpike road* act 13 Geo. 3. c. 84. contains regulations with regard to the construction of carriages passing along turnpike roads above twenty miles from London or Westminster (11), and fixes the number of horses with which carriages of particular dimensions, are allowed to be drawn, making however certain exceptions with regard to carriages weighed at the weighing engines, &c., and others to be allowed of at the discretion of the trustees with regard to carriages to be drawn up hills (12). If, also, it should appear, upon the oaths of credible witnesses, to the satisfaction of any justice or justices of the peace, or of any court of justice authorized to enforce the execution of the act, that any carriage could not by reason of deep snow or ice be drawn with the respective weights, and by the number of horses or beasts of draught

(1) 13 Geo. 3. c. 78. s. 26. 52.

(2) 13 Geo. 3. c. 78. s. 15. to 23. 55 Geo. 3. c. 68. Rex v. Balme, Cowp. 648 Welch v. Nash, 8 East, 394. De Ponthieu v. Pennyfeather, 5 Taunt. 634.; and as to appeal, 3 M. & S. 459. The King v. the Justices of Hertfordshire.

(3) 13 Geo. 3. c. 78. s. 30. 45, 46.

(4) 13 Geo. 3. c. 78. s. 71.

(5) Id. s. 50.

(6) Id. s. 41.

(7) Id. s. 24. 65, 66. The King v. Winter, 13 East. 258.; and see as to costs, The King v. Taunton, St. Mary, 3 M. & S. 465.

(8) 13 Geo. 3. c. 78. s. 67, 8. 47. 72. 80. The King v. the Justices of Lancashire, 12 East, 366. Rex v. the West Riding, 5 T. R. 629. Rex v. Mitchell, id. 701. Limitation of action, &c. s. 81.

(9) Hawk. B. 1. c. 76. s. 18. Rex v. Inhabitants of St. George Hanover Square, 3 Campb. 222. The King v. Netherthong, 2 Barn. and Ald. 179.

(10) Bac. Abr. tit. Highways. Burn J. Highways.

(11) 13 Geo. 3. c. 84. s. 12.

(12) See these exceptions, 13 Geo. 3. c. 84. s. 13. to 18.

thereby allowed, it shall be lawful for the justices of peace or court to stop all proceedings before them for the penalty or forfeiture incurred by drawing with a greater number of horses or beasts of draught than are thereby allowed (1). The application for a stay of proceedings under this clause must be made to the court above in which the action is brought, and the defence is not available at nisi prius (2). The act does not extend to any chaise marine, coach, landau, berlin, chariot, chaise, chair, calash, or hearse, or to the carriage of ammunition or artillery for his majesty's service, or to any cart or carriage drawn by one horse or two oxen, and no more; or to any carriage having the sole or bottom of the fellies of the wheels of the breadth of nine inches, and laden with one block of stone, one piece of marble, one cable rope, one piece of metal, or one piece of timber (3). No person is liable to pay toll at any toll gate erected across or on the side of any turnpike road, nor is subject to any penalty for a carriage, horse, or beast, which only crosses the road, and does not pass above one hundred yards upon it, except over some bridge erected at a considerable distance by the trustees of the turnpike road (4). This exception includes not only those carriages which go across the road, but also such as pass upon it in any direction for a distance not exceeding one hundred yards (5). No toll is to be collected in respect of carriages solely employed in carrying materials for the repair of any turnpike road or public highway, or for going to such employment, or returning after having been so employed (6). But a bridge is not a highway within the meaning of this clause, and therefore toll is payable for a carriage employed in carrying materials for the repair of a bridge along a turnpike road (7). The exemptions from toll which may be claimed by carriages employed in husbandry, are regulated by the stats. 17 Geo. 3. c. 16., 52 Geo. 3. c. 145. and 53 Geo. 3. c. 82., which set at rest the doubt that formerly existed on this subject (8). The stat. 17 Geo. 3. c. 16., after reciting that an exemption from toll has been granted by several particular turnpike acts for cattle going to and from water

(1) 13 Geo. 3. c. 84. s. 19.
(2) Robinson v. Pocock, 11 East, 484.
(3) 13 Geo. 3. c. 84. s. 27.
(4) 13 Geo. 3. c. 84. s. 34.
(5) Mayor v. Oxenham, 5 Taunt. 340. but see Phillips v. Harper, E. T. 1814. K. BMS.
(6) 13 Geo. 3. c. 84. s. 60.
(7) Osmond v. Widdicombe, 2 Barn. & Ald. 49.
(8) Chambers v. Eaves, 2 Campb. 393. Rex v. Hamlyn, 3 Campb. 379. Hickinbotham v. Perkins, 3 Moore, 185.

and pasture, and that many disputes have arisen how far that exemption extends, enacts, that in all cases where an exemption from toll for cattle going to and from water or pasture is given by any turnpike road act, the exemption shall only extend to such cattle as are driven to and from water or pasture, from one parish to the next adjoining parish, or to such as do not pass upon any such turnpike road more than for the space of two miles in going to or returning from water or pasture (1). The act for repairing the highways leading to Highgate Gatehouse, &c. which exempted horses attending cattle to or from the pastures, did not extend to protect such as went to fetch cattle, but could not be said to be in attendance upon them (2). Where a turnpike act exempted persons from toll in going to and returning from their proper parochial church, chapel, or other place of religious worship on Sundays, the word parochial was held to extend over the whole clause, and therefore a dissenter was considered not to be within the exemption in going to and returning from his proper place of religious worship, situated out of the parish in which he resided (3). If by the terms of the act the person travelling in a carriage is exempt from paying more than once on the same day, it is not in general material whether, when the carriage repasses, the same be drawn by the same horses (4), and the same rule applies where the toll is charged upon the horses (5). A collector or renter of turnpike tolls, though illegally appointed without the forms prescribed by the act of parliament, may still recover, upon a count for an account stated, the amount of the toll for which he had credited the defendant for passing through the gate, no objection being made to the plaintiff's title by the trustees or creditors of the turnpike; and a payment of part of the sum demanded, accompanied with a promise to pay the remainder, is a sufficient recognition of the plaintiff's title, and enables him to recover under a count for an account stated (6). An action of *indebitatus assumpsit* may be maintained for tolls due, or an action in the same form, for money had and received, to recover tolls extortionately taken (7). A question of exemption

(1) 17 Geo. 3. c. 16.

(2) Harrison v. Brough, 6 T. R. 706.

(3) Lewis v. Hammond, 2 Barn. & Ald. 206.

(4) Williams v. Sangar, 10 East, 66.

(5) Gray v. Shilling, 2 Brod. & Bing. 30.

(6) Peacock v. Harris, 10 East, 104.

(7) Parsons v. Blandy, Wightwick's Rep. 22.

from toll cannot be tried in an action against the turnpike-gate keeper for extortion, unless the ground of exemption was specified at the time when the toll was taken (1). Toll-gate keepers, sued for acts done under the statute 25 Geo. 3. c. 31., for regulating the post-horse duties, have been holden not to be within the provisions of the 13 Geo. 3. c. 78. s. 81., so as to render it necessary that they should be sued in the county where the fact is committed. (2)

The superintendence of turnpike roads, within which class are comprehended the principal highways of the kingdom, is in general committed, by the acts of parliament, to persons named as trustees for putting the acts in execution. In selecting these persons care has been taken to appoint such as are most likely, from their general character and respectability as well as from their property in the neighbourhood, to pay a due regard to the interests of the public. The statute for making or repairing a turnpike road, in general, contains a clause ascertaining the quantity of estate which a man shall be possessed of in order to entitle him to act as trustee. And where no qualification is directed by any particular act, the statute 13 Geo. 3. c. 84. provides that no person shall be capable of acting as a trustee in the execution of any such act, unless he shall be, in his own right or in the right of his wife, in the actual possession or receipt of the rents and profits of lands, tenements, or hereditaments of the clear yearly value of £40, or possessed of or entitled to a personal estate of the value of £800, or heir apparent of a person possessed of an estate in land of the clear yearly value of £80; and unless, if he be not such heir apparent, he shall, before he acts, take an oath in a prescribed form as to the amount of his property: a failure to comply with this regulation exposes the offender to a penalty of £50, and the proof of qualification lies on the person prosecuted (3). A new act of parliament is at present in contemplation for consolidating and amending the laws relating to turnpike roads and other highways.

II. Of Canals and Tolls incident thereto.

The importance and utility of *canals* have been so long and so generally acknowledged, that it is scarcely necessary to introduce the subject with any remarks on the advantages resulting from their encouragement. Dr. Smith observes, in his Wealth

(1) Rex v. Hamlyn, 4 Campb. 379.

(2) Bazing v. Shelton, 5 T.R. 16.

(3) 13 Geo. 3. c. 84. s. 44.

of Nations, that good roads, canals, and navigable rivers, by diminishing the expence of carriage, place the remote parts of the country more nearly upon a level with those in the neighbourhood of large towns, and on that account he says they are the greatest of all improvements. They encourage the cultivation of the remote parts, which must always be the most extensive circle of the country. They are advantageous to towns, by breaking down the monopoly of the country in the neighbourhood; and beneficial to all parts of the country, for though they introduce some rival commodities into the old markets, they open many new markets for the sale of produce. The signal benefits to be derived from canals were pointed out to the notice of this country by Dean Tucker, after the example of France. He observes, that the expedient of cutting canals is preferable to that of making rivers navigable; the expence not being in general greater, the repairs being easier, and the natural casualties of inundation, shifting of sands, &c. less in the case of a canal than a river, and the labour of navigation on a canal being the same both up and down (1). The example set by the Duke of Bridgewater, about the year 1757, in constructing the celebrated canal which bears his name, for the purpose of conveying coals from his estate at Worsley in Lancashire to Salford, near Manchester, was quickly followed by several companies of adventurers, who were continually applying to parliament for powers to raise a joint stock upon transferable shares, and to make and maintain canals in most parts of the kingdom. Many of these have been long completed, and have contributed in an eminent degree to the improvement of the country, as well as in numerous instances to the enriching of the individuals concerned. In the laudable zeal of adventurers to extend, and of the people of great towns and proprietors of mines and great manufactories to receive, the benefits of inland navigation, numerous schemes have been adopted, where, from the actual scarcity of water, or its previous appropriation to mills, a canal with locks was impracticable. The necessity of a cheap and expeditious mode of conveying coals from the pits to the keels or ships, had, as early as the year 1680, introduced the use of wooden *railways* for the waggons to move upon between the Tyne river and some of the principal pits, and these by degrees became extended to a great number of other coal works. Since the more general introduction of cast iron, and its cheaper conveyance by means of canals, *iron rails* have been

(1) Tucker on Trade, 116, 7.

substituted in the place of the wooden ones before mentioned; and the use of inclined planes, on parts of the railway having a much greater declivity or slope than it is practicable to drag carriages up by means of horses, has become very frequent in parts where the rise of the ground required it; machinery being on these inclined planes adopted to supply the place of horses.

The acts of parliament for making canals and railways are now so numerous that their principles are perfectly understood. Their great requisites are, the establishment of a company as a corporation, with a fixed name; power for the projectors to obtain such lands as they may want, on making a proper compensation (1); to raise money (2); to make bye-laws; and generally to do all acts which may benefit the concern, care being taken that a proportionate benefit shall also be secured to the public. The amount of compensation to be paid for cutting through lands in the line of a canal, is sometimes directed by the act of parliament to be settled by commissioners appointed for the purpose, who are to ascertain either by annual rent or a sum in gross, the value of the lands set out for making the canal, as also the recompence for damages sustained; and if the parties are dissatisfied with their determination, the commissioners are to issue a warrant to the sheriff of the county where the lands lie, to summon a jury to assess such value or recompence. On payment or tender of such sum as the commissioners ascertain or the jury assess, the company may take possession of the lands, and upon further recording the determination of the commissioners, or the verdict of the jury at the sessions, the land will vest in the company; but until such sum is paid or tendered, the company will not have power to enter (3). The court of king's bench will not grant a mandamus to compel a canal company, in pursuance of the provisions of an act of parliament, to proceed to an assessment of the value of land taken for the purposes of canal, and of the recompence to be made for the damages thereby sustained, if the parties interested in the land do not make their application to the court within a reasonable time after the land was taken by the company; especially if there be another remedy by action of ejectment (4). A canal act having

(1) Vide Lees v. Manchester and Ashton Canal Company, 11 East, 649, 650.; and Gough v. Worcester and Birmingham Canal Company, 6 Ves. jun. 354.

(2) See Broughton v. Proprietors of Manchester and Salford Water Works. 3 B. & Ald. 1—4. Slack v. the Highgate Archway Company, 5 Taunt. 792.

(3) The King v. Stainforth and Keadbey Canal Act. 1 M. & S. 32.

(4) The King v. the Stainforth and Keadbey Canal Comp. 1 M. & S. 32. Vide 2 B. & A. 646. infra.

provided that the company should not be entitled, on purchasing lands for making a canal, to any coal mines, &c. under it; but that such coal mines should belong to the same persons as would have been entitled to them if the act had not been made; but which required the owners to give notice to the company of their intention to work their mines within ten yards of the canal, that the company might inspect the mines, and stop the further working of them, on paying compensation to the owners. The court of king's bench determined that the right of the owners to work within the ten yards was left as before the act, if, after notice given by them to the company, the latter did not purchase out their rights; and that although the canal was damaged by the nearer approach of the mine after such notice and non-purchase, no action could be maintained against the mine owner for such injury (1). If the funds represented to parliament as adequate for the completion of the undertaking be insufficient, the persons authorized to cut the canal will be directed, by a court of equity, on the previous application of the owner of the lands through which they are cutting, to desist from further proceeding (2). But persons so authorized and required by the statute to appropriate certain sums for the construction and maintenance of works to protect a harbour, in which the canal was intended to terminate, will not be restrained, on account of a present insufficiency of funds, from cutting through their own lands at a distance from the harbour, pending an application to parliament for further powers to levy money (3). The court of king's bench will direct a writ of mandamus to be issued, to compel a company of proprietors incorporated by act of parliament to reinstate and maintain a railway unlawfully taken up by the company after it had been once put down, the statute having directed that the public should be entitled to the beneficial enjoyment of the railway (4). So where certain persons and their successors were authorized by act of parliament to make a river navigable, and to cut the soil of any person for making any new channel, &c., by virtue of which they cut through a highway, rendered it impassable, and a bridge was built over the cut, over which the public passed, and which had been repaired by the proprietors of the

(1) Wyrley Canal Comp. v. Bradley. 7 East, 368.

(2) Agar v. the Regent's Canal Comp. cited 1 Swanst. Rep. 250.

(3) The Mayor and Burgesses of King's Lynn v. Pemberton, 1 Swanst. 244.

(4) The King v. the Severn and Wye Railway Comp., 2 Barn. and Ald. 646. The King v. the Commissioners of Dean Inclosures, 2 M. and S. Vide Laine v. Newdigate, 10 Ves. 92.

navigation, the proprietors and not the county at large were held liable to be indicted for the non-repair of the bridge (1). The commissioners for making a brook navigable, with powers to borrow money, and having given orders for persons to be employed in the works, all the acting commissioners who were present at any of the meetings, were held liable to pay the workmen, although the fund was deficient. (2)

Shares and expences.

By the Huddersfield canal act, the *shares* were declared to be vested in the subscribers, their executors and assigns, with power to the subscribers to assign their shares, and a committee to be appointed under the act were authorized to make calls on the proprietors of shares at such time as they should think fit; but the court determined, that an original subscriber is not liable for any call made by the committee after assigning his share (3). By an act for making and maintaining the Glamorganshire canal, power is given to the canal company to make all such works as they shall think necessary and proper for "effecting, completing, maintaining, improving, and using the canal and other works," the company being required to lay before the sessions an account of the sums expended in making and completing the canal up to the time of its completion, and after that an annual account of the rates collected, and of the charges and expences of supporting, maintaining, and using the navigation and its works. And the justices at the sessions are authorized, in case it appears to them that the clear profits exceed the percentage limited by the act on the sums mentioned in the first account to have been expended by the company (that is to say, in making and completing the canal and its works), to reduce the canal rates. But the justices are not authorized by this statute, even after the period fixed for the completion of the canal, and after the first account delivered of the capital expended in the undertaking, and on which the dividends were to be calculated, to reject charges and expences stated in the annual account of disbursements for new works, such as a reservoir and steam engine which the company deemed necessary, and proved by evidence to have been erected for the support and improvement of the original line of canal, and for the better supplying it with water in dry seasons; though it seems, that if

(1) The King v. Kerrison, 3 M. & S. 526. The King *v.* Inhabitants of Kent, 13 East, 220. The King v. Sundry, 14 East, 529.

(2) Horsby v. Bell, Ambl. 770.

(3) The Huddersfield Canal Company v. Buckley, 7 T. R. 36.

the new works had been shewn to be merely colourable, and erected for purposes collateral to the navigation authorized by the act of parliament, such charges would have been rightly rejected by the sessions (1).

Where a canal act directed that no boat navigating therein, which should not be capable of carrying a greater burthen than 20 tons, or which should not have a loading of 20 tons on board, should be allowed to pass through the locks, unless on payment of tonnage equal to a boat of 20 tons; the court of K. B. decided that this was not confined to boats carrying some loading, but that empty boats came within the meaning of the clause, and that for them toll was payable as on boats having a loading of 20 tons; for the grounds of the payment are the trouble which arises in opening the lock-gates, and the loss of water thereby sustained, which applies more strongly to empty than laden vessels, because the former occasion a greater loss of water than the latter (2). Thus it seems that a pleasure boat would be liable to pay as much as the lowest tonnage appointed for loaded vessels on any canal, except where, as in the case we have mentioned, there was an express sum fixed for their passing through (3). It was also held, that the act having imposed different rates of toll on different goods carried along the canal, the tonnage on an empty boat was to be calculated at the lowest rate applicable to any species of goods (4). Where the act imposed a toll of 1s. per ton upon all coal, &c. navigated upon any part of the canal from a place A., or from any place within two miles thereof, it was considered that the clause only applied to voyages commencing within those limits, and that no such toll was payable for coal loaded at a place more than two miles from A., although conveyed upon a part of the canal within two miles from A. The ground for the toll was, that great expence had been incurred by the company in making that particular part of the canal; and as persons who travelled a short distance on the canal would pay but a small toll, the legislature provided, that if that short distance was in this particular spot, they should pay an additional toll; that reason, however, did not apply to persons who came from a distance, and whose ordinary payments were therefore more considerable (5). Where Tolls.

(1) Rex v. Glamorganshire Canal Company, 12 East Reports, 157.

(2) Per Bayley J. in Hollingshead v. The Leeds and Liverpool Canal Company, 2 B. & A. 70.

(3) Ibid.

(4) Ibid.

(5) Brittain v. Cromford Canal Comp. 3 B. & Ald. 139.

a canal act gave an higher rate of tonnage for light goods than for heavy goods, if a jury find that certain goods were heavy goods when the act passed, a subsequent practice in the country for the space of ten years, to consider the same species as light goods, will not entitle the canal company to demand for these the toll on light goods (1).

Tolls payable for the carriage of goods on navigable canals, are liable to be rated for the relief of the poor (2). And where a navigation act empowered the proprietors to take so much per ton for all goods carried along the canal, it was held that they were rateable to the poor for the tolls in the different parishes where the tolls became due, that is, where the respective voyages finished, although for their own convenience they were authorized to collect the tolls where they pleased, and did in fact collect them in other parishes (3). The Duke of Bridgewater having been empowered by statute to erect a lock upon the Rochdale canal, and to receive at such lock certain rates or tolls upon goods in vessels navigated from that canal into his own, as a compensation for the profits arising to him from certain wharfs at Manchester, which were sacrificed for the public benefit in that navigation, the court held that a rate made upon his trustees, occupiers of the "Rochdale canal, lock, tunnel, dues or rates," was good, although the trustees were found not to be inhabitants of the township (4). But where a river navigation extended through several parishes, and tonnage dues became payable in respect of goods carried along the line of navigation and landed at a wharf locally situate within the parish of B., it was held that a rate made upon the proprietor of those dues for their whole amount in the parish of B. stated to be for river tonnage, could not be considered as a rate upon that part of the river locally situate within the parish of B., but as a rate upon the parts of the river situate as well within as without the parish, and that it could not therefore be supported (5). By the canal

(1) The Company of Proprietors of the Staffordshire and Worcestershire Canal Navigation v. the Company of Proprietors of the Navigation from the Trent to the Mersey, 6 Taunt. 151.

(2) Rex v. Mayor of London, 4 T.R. 21. Rex v. Page, 4 T. R. 543. Rex v. Aire and Calder Navigation, 2 T. R. 660. Rex v. Prop. of Staffordshire Navigation, 8 T.R. 340.

(3) The King v. the Company of Prop. of the Staffordshire and Worcestershire Canal Navigation, 8 T. R. 340.

(4) The King v. Sir A. Macdonald and others. 12 East, 324.

(5) Rex v. Milton, 3 Barn. & Ald. 112.

acts, certain rights are secured to the public, to the mortgagees, if there be any, and to the proprietors; and an agreement made by the canal company, which has the effect of infringing any of these several interests, is illegal, and cannot be enforced in a court of law. Where a canal company was empowered to take such rates, not exceeding one penny per ton per mile upon coal, as should be fixed at a general assembly of the proprietors, and also to reduce the rates at a general assembly held on certain notice, but no reduction was to be made without the consent of the major part in value of the proprietors; a contract made by the company, but not at such general meeting, with certain individuals, by which, in consideration of their making a navigable cut to convey water from their collieries through land not within the statutable line of the canal into the canal, and vesting it in the company, the latter agreed to allow them to carry their coals through the cut and along the canal for 1s. per ton, the company paying back 6d. per ton, was held to be illegal and void: 1st. As a speculation by which the company might gain more or less than the legislature intended they should take under similar circumstances from the public in general: 2dly, As extending in effect the power of the company to purchase lands beyond the limits assigned by the act: 3dly, As enabling them to raise more capital than they were entitled by the act to do, by means of paying for land or works by a total or partial sale of their tolls: which tolls are made a security for the money subscribed or taken upon mortgage: 4thly, Because the tolls could in no instance be reduced but at a general assembly, &c., and this in fact operates as a reduction of the tolls *pro tanto*: and, 5thly, Such a contract should seem to be void, as diminishing, by the favour shown to particular individuals, the inducement to a general reduction of the tolls when proper for the benefit of the public (1). A recent statute has been passed to authorize the trial of felony committed on board a vessel employed on canals, navigable rivers, and inland navigations, in any county through which the vessel may have passed in the course of the voyage (2). Where a notice is required by a canal act, before action brought for any thing done under its provisions, the defendant will be entitled to insist on the want of notice, although the line prescribed for the canal may have been departed from (3).

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(1) Lees v. Manchester Canal Navigation, 11 East Rep. 645.

(2) 59 Geo. 3. c. 27.

(3) Agar v. Morgan, 2 Price, 126.

## CHAP. IX.

### *Of Fairs and Markets, and their Incidents.*

Of fairs and markets, and their incidents.

THE institution of *fairs* and *markets*, or places exclusively appointed for the sale and disposal of goods, is one of the most prominent among the regulations affecting our internal trade. The design of these establishments, which were probably of more essential utility in the infancy of commerce, appears to have been to facilitate the disposal of merchandize by furnishing places for the public to resort to, at which commodities might always be found, and in which dealings would be subject to superintendance and controul. They have accordingly many peculiar privileges and restrictions annexed to them. The laws relating both to fairs and markets are in many respects the same, and therefore may be conveniently considered together; but this distinction between the two terms is mentioned by Lord Coke, viz. that every fair comprehends a market, and therefore a statute which speaks of fairs may be applied to markets also; but that the term market does not include the idea of a fair (1). Fairs are said to have had their origin in the resort of people to the feast of dedication, and therefore in most places are by ancient custom held on the same day with the wake or festival of the saint to whom the church was dedicated; and for the same reason they used to be kept in the churchyards, till that practice was restrained by public authority (2). The word is derived by Lord Coke from the Latin *forum* (3), but other authors derive it from *feriæ*, because it is said that all persons who frequent a fair are privileged from arrest or molestation for debts not contracted or promised to be paid within it. (4)

Fairs are excepted out of the stat. 1 & 2 P. & M. c. 7, which was passed to prevent retail traders not keeping establishments

(1) 2 Inst. 406. 221.
(2) Jac. Dict. tit. Fair.
(3) 2 Inst. 221.
(4) Vide stat. 3 Ed. 1. c. 23. Jac. Dict. tit. Fair. Act 17 Ed. 4. c. 2. and 1 Rich. 3. c. 6. as to piepowdre court. Sed quære, no such privilege now exists.

in towns from selling wares in them. This statute enacts that no person living in the country out of any city, borough, town-corporate, or market-town, "shall sell by retail any woollen cloth, linen cloth, haberdashery wares, grocery wares, or mercery wares, at or within any city, borough, town-corporate, or market-town, or within the suburbs or limits thereof (except it be in open fairs), upon pain of forfeiting for each offence the sum of six shillings and eight-pence, and the whole wares so sold or offered to be sold." By the third section this act is declared not to extend to sales "by wholesale in gross and not by retail." And the fifth section provides that the act shall not hinder a person from selling by retail or otherwise all manner of cloth, linen, or woollen of his own making in any city, &c. as freely as he might before the making of that act (1). The act speaks of persons living in the country out of any city, borough, &c., and therefore the inhabitants of one city, borough, &c. are not prohibited from selling woollen cloth, &c. by retail in other cities, boroughs, &c., though not in open fair (1). An ordinance was formerly made by the corporation of London, that no citizen should resort to any fair or market out of the city; but the stat. 3 Hen. 7. c. 9. repealed this ordinance, and enacted that the citizens should be allowed to trade at their pleasure to any part of the kingdom.

The proper mode of arranging the law upon this subject will be to consider, *first*, the origin of fairs and markets, the mode of holding them, and the consequences of a sale in market overt; *secondly*, the power and duty of the owners of such franchises in holding a court and appointing officers; *thirdly*, the tolls incident to fairs or markets, the remedy for them if withheld, and the remedy for the merchant if excessive toll be taken; *lastly*, the consequences of a misuser of the franchises.

No market or fair can be holden without grant from the crown, or a prescription which supposes such grant (2). And before a patent is granted, it is usual to have a writ of *ad quod damnum* executed and returned, that it may not be issued to the prejudice of a similar establishment already existing. The return of the

(1) Davis v. Leving, 2 Lev. 89. Lee v. White and others, Dougl. 256. 2 Inst. 220. Bac. Abr. tit. Fairs and Markets, A. 3 Cruise Dig. 274—469. Rex v. Marsden, 3 Burr. 1817.

(2) Com. Dig. Market, C. 1.

*ad quod damnum* is not indeed conclusive (1), and the patent may be repealed notwithstanding it, especially where the writ has been fraudulently executed; as where J. S., intending to get a patent for a market every Tuesday at Chatham, a place within a mile and a half of Rochester, in which there is a market every Wednesday and Friday, took out a writ of *ad quod damnum*, which was executed the same day it bore teste, and thirty miles from Rochester, without notice to the corporation of that city (2). According to Bracton, one market ought to be distant from another *sex leucas* (signifying leagues) *et dimidiam et tertium partem dimidiæ;* but other authors state that even at this distance it may be objected to if it occasion any prejudice, *quia rationabiles dictos constant ex viginti milliaribus* (3). It is clear, however, that a fair or market may be lawfully established within twenty miles, or a much less distance, if it be not injurious (4); and therefore the true rule as to the propriety of the grant, depends not so much on any precise distance as upon the quantum of mischief which is likely to ensue from it. The grant usually contains a clause that it shall not be to the nuisance of another fair or market, but this clause if omitted will be implied in law; for if the franchise occasion damage either to the king or a subject, in this or any other respect, it will be revoked (5); and a person whose ancient right is prejudiced is entitled to have a *scire facias* in the king's name to repeal the letters patent (6). This *scire facias* may be sued out either in the petty bag office in chancery (7), or in the king's bench (8); and allegations by these words, "whereas we are given to understand and be informed," are correct in point of form (9). A finding upon the *scire facias* that the grant was to the prejudice of another is sufficient, though the user may not be found to have been prejudicial (10). An action on the case is also maintainable at the suit of any person whose ancient franchise is injured by a new fair or market, whether a patent has been obtained for it or not (11), and although it is holden on a different day, except where the

(1) 2 Vent. 344.
(2) Id. ibid.
(3) Fleta, l. 4. c. 28. s. 13. Com. Dig. Market, C.
(4) Id. ibid.
(5) 2 Inst. 406. Sir O. Butler's case, 3 Lev. 222.
(6) Sir O. Butler's case, 2 Vent. 334. 3 Lev. 220. Rex v. Marsden, 3 Burr. 1818, per Wilmot, J. and see 6 Mod. 229.
(7) 4 Inst. 88. 3 Lev. 223.
(8) 4 Inst. 72.
(9) 3 Lev. 222.
(10) The King v. Eyre, 1 Stra. 43.
(11) Bac. Abr. Fairs and Markets, A. 2. Com. Dig. tit. Markets, C. 2.

owner of the new market has allowed the old one to be erected in the neighbourhood, and enjoyed for a considerable space of time, as for twenty years, without interruption (1). But an information in the nature of a *quo warranto* will not lie for encouraging the exercise of a franchise (2), and doubts have been entertained whether it can be granted on the application of a private individual against a person by whom a fair or market is claimed to be holden (3). And where a place has been used as a public fair or market for above twenty years, and persons have resorted to it during that time for exposing articles to sale, they will not be liable to be indicted for a nuisance in obstructing the highway, if *bonâ fide* engaged in using the place as a fair or market (4). An action on the case may be maintained for a disturbance of a fair or market; as, if a stranger disturbs those who are coming to buy or sell there, by which the owner loses his toll or profit (5). The franchise of holding a fair or market is very frequently annexed to a manor. A fair granted for a term of years is a chattel real, which passes to the executor.

Places of holding a fair or market.

With regard to the *place* where fairs or markets may be holden, the law seems to be, that if the king grant a market, to be kept in a particular place, the subjects can go to no other, although the place happens to be inconvenient; and if they do, the owner of the soil in which they meet is liable to an action at the suit of the grantee of the market (6). But if no place be limited by the king's grant, the grantees may keep the fair or market where they please, or rather where they can most conveniently (7). The lord of a manor therefore, to whom a grant of a market is made *infra villam de W.*, may hold it at any place *infra villam*; and whether the villa extends to the town of W. or the township or parish of W., the lord has a right to remove the market place from one situation to another, within the precinct of his grant; and though he should have holden it for above twenty years within the township of W., when the grant only

(1) Yard v. Ford, 2 Saund. 172. Holcroft v. Heel, 1 Bos. & Pul. 400. The King v. Smith, 4 Esp. 109.

(2) Rex v. Marsden, 3 Burr. 1812.

(3) Rex v. Marsden, 3 Burr. 1812.

(4) The King v. Smith, 4 Esp. 109. aliter. after notice of removal. The King v. Cotterill, 1 Barn. & Ald. 69, 70.

(5) 2 Rol. Abr. 106. Bac. Abr. tit. Fairs and Markets, A. 2. Turner v. Sterling, 2 Vent. 28.

(6) Dixon v. Robinson, 3 Mod. 107. Id. 127. Fitz. N. B. 125. 2 Rol. Abr. 140. 2 Bla. Com. 449.

(7) Dixon v. Robinson, 3 Mod. 107.

gave it him within the town properly so called at the time, yet if he afterwards give notice of the removal to another place in the township, the public have no right to go upon his soil and freehold in the old market place, and any person going there, is liable to an action of trespass at the suit of the lord (1). And in a late case, where it appeared that king Charles the second, by charter, granted to the corporation of Walsall two fairs, to be holden annually within the borough and foreign, and confirmed to them all markets which they then held, with a reservation of the rights of the lord of the manor, that a market had been holden immemorially in the high street of Walsall, until a very late period, when the corporation finding it inconvenient, removed it out of the high street to another and more convenient place within the borough; that the corporation had exercised acts of ownership in pulling down an old market house and erecting a new one; but that the clerk of the markets had been appointed by the lord of the manor, though he did not receive any toll from the persons frequenting it. The judge at *nisi prius*, on the trial of an indictment for a nuisance in erecting stalls in the high street after the removal of the market, directed the jury to say, whether the corporation were owners of this market; adding, that if they were, the right of removal was incident to the grant; and the jury having found in the affirmative, the court refused to grant a new trial (2). Where a grant of this nature is made to a corporation, the expressions usually are *per burgum et per villam*; if to the lord of a manor, *infra manerium*; and it is not usual to confine the grant in a town to any particular part of it. The power of removal is incident to the grant, provided the removal is not of such a nature as to defeat the object of the crown in making the grant. If the removal should be to an inconvenient place, that might lay the foundation of a *scire facias* to repeal the grant (3). The statute of Winchester prohibits fairs and markets from being kept in churchyards. (4)

Times of holding a fair or market.

The statute 27 Hen. 6. c. 5. provides, with regard to the *times* of holding fairs and markets, that no goods (except necessary victual), shall be exhibited at these places on Ascension day, Corpus Christi day, Whitsunday, Trinity Sunday, or any other

(1) Curwen v. Salkeld, 3 East. 537.

(2) Rex v. Cotterill, 1 Barn. & Ald. 67.

(3) Per Lord Ellenborough, C. J. id. ibid.

(4) 13 Edw. 1. stat. 2. c. 6.

Sunday, the Assumption of our Lady, All-saints day, or Good Friday, (the four Sundays in harvest only excepted), on pain of forfeiture of the goods to the lord of the franchise. And the fairs or markets which are granted to be holden on these festivals, may be holden either three days before or after, proclamation having been first made accordingly, and those which commence on other days are to omit these days of festival when they occur (1). But a prescription to hold a fair on a particular day, as the twenty-ninth of August, is good, without stating any exception as to Sunday (2). The statutes 1 Car. 1. c. 1. and 29 Car. 2. c. 7. further enact, that no persons whatsoever, above fourteen years old, shall exercise any worldly labour, business, or work of their ordinary calling on the Lord's Day (except works of necessity and charity, and the dressing and selling of meat in an inn and victualling house for those who cannot otherwise be provided), on pain of forfeiting five shillings; and no person shall publicly cry or expose to sale any goods whatsoever on this day, on pain of forfeiting the same; except milk, which may be sold before nine in the morning and four in the afternoon (3). By 11 & 12 W. 3. c. 24. s. 14. mackarel may be sold before or after divine service; and by 9 Ann c. 23. coachmen or chairmen may ply on the Lord's Day (4). A sale of goods on a Sunday, not made in the exercise of the ordinary calling of the vender or his agent, is not void, either by the common or statute law (5). A provision is also made with regard to the *duration* of the fair by the statute 2 Edw. 3., c. 15., which enacts, that the lord of a fair, at the commencement of the fair, shall publish for what time it shall continue, and shall not hold it beyond the legal time of its duration; and that if he do, it shall be seized into the king's hands (6). If a merchant sell after the time published, he will forfeit double the goods sold (7). He that hath a fair or market, either by grant or prescription, says Lord Coke,

(1) 27 H. 6. c. 5. Com. Dig. Market, D. Bac. Abr. Fairs and Markets, B. 2. Drury v. Defontaine, 1 Taunt. 132.

(2) Comyns v. Boyer, Cro. El. 485. Com. Dig. Market. But see as to this case, 1 Taunt. 132. 136.

(3) 1 Car. 1. c. 1. 29 Car. 2. c. 7. 3 Bac. Abr. tit. Fairs and Markets, B. 2.

(4) 3 Bac. Ab. tit. Fairs and Markets, B. 2. And see 34 G. 3. c. 61. respecting bakers.

(5) Drury v. Defontaine, 1 Taunt. 131.

(6) 2 Edw. 3. c. 15. Com. Dig. tit. Market, D. Bac. Ab. tit. Fairs and Markets, B. 3. And see 5 Edw. 3. c. 5.

(7) 5 Edw. 3. c. 5.

hath power to hold it *per unum diem seu duos vel tres dies &c.* In which place, he adds, *dies* is taken for *dies solaris*, and not *dies naturalis;* and a sale made in the night, although it will be good between the parties, will not bind a stranger, as a sale in a market-overt. (1)

Sale in market-overt, when binding.

A *bonâ fide* sale, made in a fair or market-overt for a valuable consideration, in general transfers a complete property in the thing sold to the vendee; so that, however injurious or illegal the title of the vendor may be, yet the vendee's is good against all men, except the king, whether infants, femes covert, idiots, or lunatics, men beyond sea or in prison, whether they are possessed in their own right or as executors or administrators, and whether any toll is paid to the owner of the market or not (2). The sale, in order to come within this rule, must of course take place on the market-day (3), and at the place assigned for the market (4). But the city of London is said to be a market-overt every day in the week, except Sunday; so that a sale on any of those days has the same effect as if on a fair or market-day in another place (5). And in London, every shop in which goods are publicly exposed to sale is a market-overt for such things as the owner professes to trade in (6). A sale of goods in a shop in the Strand, or elsewhere out of London, has been said not to alter the property (7). But Lord Hardwicke appears to have considered, that where the transaction is perfectly fair on the part of the vendee, though the dealing is out of the precincts of London, great allowances ought to be made in analogy to the above-mentioned customs; and therefore, that the property of goods may be changed and effectually transferred to the buyer by a *bonâ fide* sale in a shop out of London, whether the shopkeeper is the vendor or vendee, if the goods are of the kind in which he trades (8). And the same privilege may by custom be extended to a shop in Bristol, or elsewhere (9). But a wharf in London is not within the custom, and is not a market-overt for articles brought there (10). Nor can the king grant that

(1) 2 Inst. 713.

(2) 4 H. 7. 5. pl. 1. Latch. 144. 2 Inst. 713. Bac. Ab. tit. Fairs and Markets, E. Com. Dig. Market, E. Ross, Law of Vendors, 152.

(3) Id. ibid.

(4) Id. ibid.

(5) 2 Inst. 713. Moor, 360. S. P. 2 Brown. 288. Godb. 131. 8 Co. 127. a. S. P. Bac. Ab. tit. Fairs and Markets, E. b.

(6) Id. ibid. 2 Bla. Com. 449.

(7) Anon. 12 Mod. 521.

(8) Harris v. Shaw, Ca. temp. Hardw. 349.

(9) Dub. Moor, 625. Com. Dig. Market, E.

(10) Wilkinson v. King, 2 Camp. 336. Moore, 625.

a particular shop shall be market-overt (1). And the statute 1 Jac. 1. c. 21. enacts, that a sale of goods wrongfully taken to any pawnbroker in London, or within two miles thereof, shall not alter the property (2). Further, a sale, although made in market-overt, will not be binding if it be such as carries with it a presumption of fraudulence, as if it take place in a back room or warehouse, or in a corner or covert place, within a fair or market (3); or if the door or window be shut, and public observation precluded (4); or if the sale be covinous, and intended to defraud the real owner (5); or if the buyer know that the person assuming to be vendor has not the absolute property (6). So a sale *to* a man who is in truth the owner of the goods affected to be sold, is not binding upon him (7), unless the property has been altered by a previous sale; nor even though the property may have been altered, if the goods come again into the hands of the original vendor, for then the owner may stop them (8). So a sale by an infant, whose tenderness of age is obvious, is not binding (9); nor a sale by a feme covert, except it be of those things which she usually trades in, or by the consent of her husband. The privilege does not extend to the case of a pawn, for there is no market-overt for pawning (10); and the contract of sale ought to be originally and wholly made in the market, not to have its inception out of the market, and its consummation in it; and therefore a sale by sample in the market, the goods not being brought into it, is not a sale in market-overt (11). It ought also to be made in the day-time, which is explained to mean between sun-rise and sun-set, and not in the night; for a sale made in the night-time, though valid between the parties, will not bind a stranger. With regard to stolen goods, it should be further observed, that at common law if a man brought an appeal against a felon, and prosecuted him to conviction, he was held entitled to restitution, although the goods had been sold in market-overt (12); and the statute 21 Hen. 8. c. 11. enacts, that if a felon be indicted and

(1) Dict. Moor, 625.

(2) Sir H. Hartop v. Hoare, 1 Wils. 8.

(3) Com. Dig. Market, E. Bac. Abr. Fairs and Markets, E. 5 Co. 83. 2 Inst. 713. Moore, 625.

(4) Id. ibid.

(5) Bac. Abr. Fairs and Markets, E. 2 Inst. 713.

(6) Id. ibid.

(7) Id. ibid. Perkins, s. 93.

(8) Id. ibid.

(9) Id. ibid.

(10) Hartop v. Hoare. 2 Stra. 1187. 1 Wils. 8. 3 Atk. 44. Parker v. Gillies, 2 Campb. 336. note. See supra 1 Jac. 1. c. 21.

(11) 2 Inst. 220. 713. Hill v. Smith, 4 Taunt. 532, 3.

(12) 2 Inst. 714. Com. Dig. Market, E.

found guilty, or otherwise attainted by the evidence of the party robbed, or the owner of the property, or any person by his procurement, the justices shall award restitution as if the felon had been attainted at the suit of the party on an appeal. Since this statute it has been the practice to restore the goods stolen, upon the conviction of the offender, to the prosecutor of an indictment, notwithstanding any sale of them in market-overt; but no goods can be restored, except those mentioned in the indictment (1). The owner after such conviction, even although the offender has his clergy and is afterwards pardoned, or after prompt measures have been taken to obtain a conviction, but without effect, as where the felon is taken and imprisoned, but dies before trial, is entitled to retake his goods peaceably wheresoever he may find them, or to recover them by an action of trover (2). But he cannot maintain trover against a purchaser in market-overt, who sold the goods before conviction, although he gave him notice of the robbery while they were in his possession; for until conviction, the property was *in dubio*, and the purchaser was not bound to keep them till that time, although the owner would have a right to the restitution of the goods in specie, and perhaps would be entitled to recover damages in an action of trover against a person who should be fixed with the goods after conviction, and should refuse to deliver them; for then the goods would be converted to the prejudice of the owner (3). And the statute 21 Hen. 8. only extends to felonies, and not to false pretences or other criminal frauds; and therefore if goods be obtained from the owner by fraud, and pawned to a third person without notice, the owner is not entitled to them, although he prosecutes the offender to conviction; and if he get possession of his goods without satisfaction of the lien, the pawner may maintain trover for them (4). The statute, which speaks of felonies within the realm, has also been holden not to extend to goods taken piratically, and therefore the property in such goods has been considered to be bound by a sale in market-overt. (5)

(1) Bac. Abr. tit. Fairs and Markets, E. 2 Inst. 714.

(2) Id. ibid. Loft. 88. Noy, 82. Style, 346. 1 Hale, P. C. 540. Adm. Horwood v. Smith, 2 T. R. 755., and cases there cited. Foxley's case, 5 Co. 109. Anon. 12 Mod. 521.

(3) Horwood v. Smith, 2 T. R. 750. 755.

(4) Parker v. Patrick, 5 T. R. 175.

(5) Spanish Ambassador v. Jolliffe, Hob. 79. And see 3 Bulstr. 29.

Horses.

There is one species of personal chattels in regard to which no right or property can be easily transferred without the consent of the owner, and those are *horses* (1). For a purchaser gains no property in a horse that has been stolen, unless it be bought in a fair or market, according to the directions of the statutes 2 P. & M. c. 7. and 31 Eliz. c. 12; by which it is enacted, that the horse shall be openly exposed in the time of such fair or market for one whole hour together, between ten in the morning and sunset, in the public place used for such sales, and not in any private yard or stable, and afterwards brought by both the vendor and vendee to the book-keeper of such fair or market that toll be paid, if any be due; and if not, one penny to the book-keeper, who shall enter down the price, colour, and marks of the horse, with the names, additions, and abode of the vendee and vendor, the latter being properly attested. Nor shall such sale take away the property of the owner if, within six months after the horse is stolen, he puts in his claim before some magistrate where the horse shall be found, and within forty days more proves such his property by the oath of two witnesses, and tenders to the person in possession such price as he *bonâ fide* paid for him in market overt. But in case any of the points before-mentioned are not observed, such sale is utterly void; and the owner shall not lose his property but may at any time retake his horse wherever he happens to find him, or bring an action for him, at his election (2). These provisions extend to horses taken by wrong, although not stolen (3). And if the seller of a stolen horse be entered in the toll-book by a false name, the property is not altered (4). But where a complaint was made to a magistrate by the owner of a horse, that it had been stolen by a third person, it was held that a constable, although armed with a warrant against the supposed offender, was not justified in taking the horse out of the possession of a *bonâ fide* purchaser. (5)

Court of Piepoudre.

To every fair or market there is incident, even without any express words in the grant, a *court of piepoudre*, called in Latin, *curia pedis pulverizati*, being derived, according to some authors, from the word *pulvis*, in allusion to the dusty feet of the suitors,

(1) 2 Inst. 719. 2 Bla. Com. 450.

(2) 2 Bla. Com. 450, 1.

(3) 2 Inst. 717. Sir W. Jones, 163. Palmer, 485.

(4) Gibbs's case, Owen, 27. 1 Com. 158, and Com. Dig. Market, E. cont. Cro. El. 86.

(5) Josephs v. Adkins. 2 Stark. 76.

or according to some, from its holding plea of contracts and other matters *parvi ponderis*, or, as others derive it, from the French words *pied puldreaux*, signifying a pedlar (1). It is a court of record in which the steward is the judge (2); but by special custom, the mayor or some other person may preside (3); and by custom also it may be holden where there is no fair or market (4). It is the lowest but most expeditious court of justice in the kingdom. It holds jurisdiction over contracts made in the fair or market for goods bought or sold there, battery or disturbance there, or slander of wares in the market; but not over contracts made in the fair for goods to be delivered elsewhere, nor over slander not concerning the fair or the goods there, or out of the precinct of the fair or market, or at a day before or after it, or at another fair or market (5). By the stat. 17 Edw. 4. c. 2. no steward or minister of the court shall hold plea upon pain of £5., unless the plaintiff or his attorney swear that the contract or other cause of action took place within the time and precinct of the fair or market; and if such oath be made, the defendant may plead in abatement, or tender issue on the fact; and if there be no oath, or if the issue be found for the defendant, the plaint shall be dismissed, and the party sent to his remedy at common law (6). The plaintiff's oath need not appear on the record (7), but pleadings must shew that the cause of action arose within the jurisdiction, or they will be void (8). *Error* lies from this court in the nature of an appeal to the courts at Westminster (9); and they are also bound by the st. 19 Geo. 3. c. 90. to issue execution in aid of its process after judgment, where the defendant's person or effects are not within the limits of its jurisdiction (10); which statute, says Blackstone, may possibly occasion the revival of the practice and proceedings of these courts, now in a manner forgotten. The reason of their original institution seems to have been to do expeditious justice among the variety of persons resorting from distant places to a fair or market, since perhaps no other inferior court might be able to serve its process or execute its judgments, on both or perhaps

(1) Com. Dig. Market G. 2 Inst. 220-4. Id. 272. 3 Bla. Com. 32. Cro. El. 530.

(2) 4 Inst. 272.

(3) Skin. 33. 2 Bulstr. 23.; and see Cro. Jac. 313.

(4) 4 Inst. 272.

(5) 4 Inst. 272. Wilkinson v. Nethersol, Cro. El. 530. Howel v. Johns, Cro. El. 773. Skin. 33. 10 Co. 73. Stat. 17 Edw. 4. c. 2.

(6) 17 Edw. 4. c. 2. not extending to bishoprick of Durham.

(7) 4 Inst. 272.

(8) Skin. 33.; and see Cro. El. 530.

(9) Cro. Eliz. 530. 773.

(10) 19 Geo. 3. c. 90.

either of the parties; and therefore if this court had not been erected, the complainant must, even in the first instance, have resorted to some superior judicature (1).

Clerk of the market.

The owners and governors of fairs are also required to take care that every thing be sold according to just weight and measure; and for purposes of this kind may appoint a *clerk* of the *market*, who is to mark and allow all such weights, and for his duty herein can only take his just and reasonable fees (2). In a late case, where the corporation of Walsall claimed the right of holding a market in the town, but it appeared that the lord of the manor had always appointed the clerk of the market, but had not however received any toll from the persons frequenting it, the court of K. B. determined that this act of the lord was not absolutely incompatible with the claim made by the corporation, in whom the right was by other evidence completely established (3). By the stat. 22 & 23 Car. 2. c. 12., the clerk of the market, and where there is none, the mayor or head officer, or other person having benefit of the market, shall cause to be sealed all measures duly gauged brought to them for that purpose (4). And by stat. 22 Car. 2. c. 8., if any mayor, lord of the liberty, or other person authorized to mark or seal measures, shall neglect or refuse, being required to seal or mark any bushel, half bushel, or peck, duly gauged, he shall forfeit for the first offence £5, and for every other offence £10 on conviction, by presentment or indictment at the county sessions, half to the prosecutor and half to the poor, to be levied by distress; and for default of distress to be imprisoned by warrant of the justices at such sessions till payment be made (5). And no person shall take for the sealing and marking of a bushel more than one penny; for a half bushel or peck, more than one halfpenny; for a gallon, pottle, quart, pint, or half pint, more than one farthing; and if any person shall take more, he shall forfeit £5 to the poor, on conviction before one justice by the oath of a witness, to be levied by the churchwardens or overseers by distress; in default of distress, imprisonment till paid (6). And

(1) 3 Bla. Com. 33.
(2) Bac. Abr. Fairs and Markets, O.; and see 4 Inst. 274. Com. Dig. Market H.; and see stat. 17 Car. 1. c. 19. and 22 Car. 2. c. 8. 1 Anders. Hist. Com. 384.
(3) The King v. Cotterill, 1 Barn. & Ald. 66.
(4) 22 & 23 Car. 2. c. 12. s. 4.
(5) 22 Car. 2. c. 8. s. 3, 4; and see id. & post, tit. Weights and Measures, as to fees for sealing, &c.
(6) 22 Car. 2. c. 8. s. 4. 16 Car. 1. c. 19. s. 4.

the mayors and other head officers in market towns are bound twice a year, or oftener, to cause all weights and measures to be brought before them and examined, and such as they find defective to be broken and burnt, and the offender shall forfeit to the mayor or other officer, for the first time, 6s. 8d.; for the second time, 13s. 4d.; for the third time, 20s., and be set on the pillory (1).

Of tolls in fairs and markets.

The *tolls* payable in fairs and markets, will be considered in the following order, viz. *first*, by what authority; *secondly*, for what benefit; *thirdly*, from whom they may be claimed; *fourthly*, the remedies for them, if withheld; and, *fifthly*, the consequences of taking excessive toll.

Toll is not a necessary incident to a fair or market; and if the king grant a fair or market, without adding toll, such fair or market is free, and no toll can be taken (2); tolls therefore can only be claimed by express words in a grant, or by prescription, which supposes such grant (3). A grant of a market, *cum omnibus libertatibus pertinentibus*, does not confer a right to take toll, except in a re-grant of market to which tolls were annexed by prescription, before it reverted to the crown (4), and if the market or fair be of recent establishment, there can be no prescription to support the right (5); but in a late case where an act of parliament empowered the owner of the market to take such tolls as were then usually collected or paid, or were payable in it, the court of K. B. determined that the plain meaning of the statute was, that the usage which had prevailed since the time of the grant, should be the guide in future, as to the amount of the tolls (6). In this case, king Charles the second, by letters patent, had granted a market in Covent Garden to William Earl of Bedford, with all liberties, *tolls*, profits, &c. to the like market belonging, which seemed to be thought insufficient to convey a right to toll, no specific toll being expressed (7), and it was further objected that different sums had been

(1) 11 Hen. 7. c. 4.

(2) Heddy v. Wheelhouse, Cro. El. 558—591. Palmer, 80. 2 Inst. 220. 716. Osbuston v. James, Lutw. 1380.

(3) Id. ibid.

(4) Palm, 78. Cro. El. 558.

(5) Holloway v. Smith, 2 Stra. 1171.

(6) The Duke of Bedford v. Emmett, 3 B. & A. 366.

(7) The Duke of Bedford v. Emmet, 3 Barn. & Ald. 367, 8. but see Lowden v. Hierons, 2 Moore, 108. and cases there cited, Com. Dig. Toll E.

taken for toll in different parts of the market; but this objection was thought of less weight, as the tolls claimed were not, strickly speaking, market tolls to be paid by the buyer, but rather in the nature of stallage, and claimed for exposing the goods to sale (1). After the original institution of a fair or market without toll, the king may, by a new grant, authorize a reasonable toll to be taken, in consideration of some new benefit to trade (2). If the toll granted be unreasonable, the patent is void as to the toll, and the fair or market free (3). Toll payable at a fair or market is in general defined to mean a reasonable sum of money due to the owner of the fair or market, on the sale of things tollable within it, or for stallage, picage, or the like. The words *stallage* and picage are so far included within the general term toll, that a grant to be discharged of toll discharges a man from picage and stallage, and a prescription for *toll*, viz. so much *pro qualibet stalla* is good (4). But there is a material distinction between stallage and picage, and a market toll strictly so called. Stallage is payable for the liberty of having stalls in a fair or market (5), or for removing them from place to place (6). Picage is a duty for picking holes in the lord's ground, for the posts in the stalls (7). Stallage and picage therefore belong to the owner of the soil; a toll, strictly so called, belongs to the owner of the market. A toll is not to be paid before sale (except by special custom), and it is only demandable of the buyer, on which account Lord Coke says, that a fair or market by prescription is better than one by grant (8). Picage and stallage are uncertain, and payable of common right to the owner of the soil, whether the goods are sold or not. There is no general right to erect stalls in a market place, and the stall keeper must compound as he can (9); and it is a trespass, to set tables in a market place for the sale of goods thereon, without leave of the owner of the soil (10). But he cannot in such case distrain the goods as damage feasant; and if the owner of the soil erect stalls, and do not leave sufficient room for the market people to stand and sell their wares, so that for want of room

(1) 3 B. & A. 371, 2, 3.
(2) 2 Inst. 220.
(3) Id. ibid.
(4) 2 Lutw. 1519. Palmer, 78. Com. Dig. Market, F. 2. Bac. Abr. Fairs & Markets, D.
(5) Palmer, 77. Com. Dig. Market, F. 2.
(6) Id. ibid.
(7) Id. ibid.
(8) 2 Inst. 221.; and see infra as to tolls.
(9) Mayor of Northampton v. Ward, M. 1992. Stra. 1238. Wilson, 107.
(10) The Mayor of Norwich v. Swann, 2 Bla. Rep. 1116.

they are forced to hire the stalls of the defendant, this is extortion by him in respect of the rent the people are obliged to pay (1). A fair granted in borough english land will descend to the eldest son, but picage and stallage which are attached to the ownership in the soil, to the heir special, i. e. the youngest son of the grantee (2). Regularly no toll is due before sale, for it is to be paid by the buyer, and not by the seller (3). By special custom it may be due for goods not sold, but in that case it seems to be rather in the nature of stallage than toll (4). Of common right it is said to be only due upon a sale of live cattle, not of victuals, wares, &c. (5), nor hens or geese, or any other things of the like nature (6). But by custom it may be due for all goods brought to the market (7). The king cannot grant a toll for goods not brought to market (8); nor can the owner of a market prescribe for toll for goods sold by sample, but not brought into it in bulk (9). A sale by sample in a market, although coupled with a subsequent delivery out of it, will not sustain a count for toll, as for corn brought into the market and there sold. (10)

The owner of a house next to a fair or market cannot open his shop for selling in a market without payment of stallage; for if he takes the benefit of the market, he ought to pay the duties there (11). It is claimable in a new fair or market, in respect of the use of the soil, though no other tolls for market dues are imposed (12), the soil being considered no farther permitted to the public than the common right of entry goes (13). The king is not liable to pay toll (14): he may also exempt a subject from tolls payable to his own fairs or markets, or to such as may be afterwards granted to a subject, but he cannot grant a discharge from tolls already existing in the hands of a subject by grant or prescription (15). So the inhabitants of a borough, &c. may be exempt by charter; as the inhabitants of the duchy of

(1) Wigley v. Peachy, 2 Lord Raym. 1589.
(2) Moore, 474.
(3) 2 Inst. 221. 2 Lutw. 1336.
(4) Id. ibid. 2 Rol. Abr. 123. l. 37.
(5) Moor. 474.
(6) Per. Clench Owen, 109. Vin. Abr. Toll, C.
(7) 1 Leon. 218.
(8) 2 Lutw. 1502.
(9) Hill v. Smith, 4 Taunt. 520.
(10) Bailiffs, &c. of Tewkesbury v. Diston, 6 East, 438.
(11) Com. D. tit. Market, F. 2. cites 2 Roll, 123. pl. 30. 6 East, 446.
(12) Palm. 82. 2 Stra. 1238. 1 Wils. 115. 2 Inst. 220, 1.
(13) 2 Inst. 220. 1 Ld. Raym. 149. See as to tronage, &c. for weighing, &c. Com. Dig. London, K. 7. Com. Dig. Tolls, B.
(14) 2 Inst. 221.
(15) 2 Inst. 221.

Lancaster (1). A grant of immunity to burgesses, their heirs and successors, was expounded by the usage to be a grant to the burgesses corporators only, and not to the burgate tenants and their heirs (2); and if the grantee of a royal franchise as toll, grant an immunity thereon, and the franchise of toll afterwards become extinct by unity of possession in the crown, the immunity does not thereby cease; and if the crown regrant the toll, the grantee must take it subject to the immunity. A grant from the crown that an abbot, or a bishop, &c. *et homines sui sint quieti ab omni theolonio in omni foro nundinis et transitu per totum regnum*, has been holden to extend only to toll for their own necessaries, not to toll for goods bought or sold by them as common merchants (3). Tenants in ancient demesne are also exempt, whether they hold in fee for life, for term of years, or at will; a privilege founded on their having been presumed to be employed in the maintenance and husbandry of the king's lands, and afterwards in furnishing victuals for his garrisons in time of war and rebellion, and therefore not extending to a merchant who gets his living by buying and selling (4). Ecclesiastical persons are, in general, exempt from tolls and customs for their ecclesiastical goods. (5)

The owner of every fair or market is required by the statute 2 & 3 Ph. & M. c. 7. to appoint a person in a special open place, to take the toll and keep the same place, from ten in the morning to sun-set, on pain of forty shillings; who shall accordingly take toll at the same and no other time or place, and then have before him and enter the names and dwellings of all parties to bargain of any horse, and the colour, with one special mark of such horse, on pain of forty shillings; and shall deliver the book by next day to the owner, who shall make a note of the number of horses sold, and subscribe his name to it, on pain of forty shillings (6). By the statute 31 Eliz. c. 12. no book-keeper shall take toll or make entry, unless he truly know the seller of the horse or his voucher, their names and dwellings, and then truly enter the same and the price of the horse, &c. on pain of

(1) 2 Lutw. 1332. 1379.; and see as to resident freemen of London, 1 Bos. & Pul. 487—522. 1 H. Bla. 206. 4 T. R. 130.

(2) The Bailiffs of Tewkesbury v. Brickwell, 2 Taunt. 120.

(3) 2 Rol. Abr. 202. l. 12.

(4) Bac. Abr. tit. Fairs and Markets, D. 2.; and see the cases more fully, Vin. Abr. Toll, E.

(5) 2 Inst. 4.

(6) Com. D. tit. Market, F. 1. Tollbooth.

£5 for each default; and it seems that an entry of a stolen horse by a false name in the toll book, by the vendor who stole a horse, will prevent the sale, although it took place in market-overt, from operating as a transfer of the property. (1)

Remedies for subtracting of tolls.

An action of *indebitatus assumpsit*, or debt (2), is maintainable for the recovery of the toll. Where there is a subtraction of toll legally due, the plaintiff's remedy is at law (3), and a court of equity cannot decree an account previous to the decision by a jury in favour of the tolls (4); but a bill in equity for the value of tolls alleged to be subtracted by defendants, and claimed to be due for corn sold by sample in the plaintiff's market, and for an account, with a declaration of plaintiff's title, has been retained under equitable circumstances till its decision at law (5), after which, if the event be for the plaintiff, the court of equity will decree accordingly (6). The remedy for fraudulently evading payment, as for bringing corn and selling it just by the market, in order to avoid the toll (7), is by an action on the case, as being for a tortious nonfeazance (8), and not by an action for the toll *eo nomine*, or by distraining the goods. An action on the case by the owners of a market, who had a prescriptive right of toll on all corn brought into the market and there sold; alleging that the defendant, intending to deprive them of their toll, fraudulently brought corn in the market by sample, knowing that the commodity was not there in bulk at the time of the sale, whereby the plaintiffs were prevented from taking their toll, is not sustained by evidence of the mere fact of such purchase by sample in the market, though with knowledge of the plaintiff's claim of toll, coupled with the fact of not paying the toll afterwards on demand, when the corn was delivered to the defendant in the same borough, but out of the market; for *non constat*, that the corn would otherwise have been brought into the market, or that the defendant did any act to induce the owner of it not to bring it there in the first instance. Nor will

(1) Leon. 158. pl. 225. Owen, 27.; but see Archer v. Morefoot, Cro. Eliz. 86.

(2) Com. Dig. Debt, A. 1 Chitty on Pl. 95. 106.

(3) Mayor, &c. of Reading v. Winkworth and others. 5 Price, 473. Bunbury, 41. 68. 330.

(4) Id. ibid.

(5) Id. ibid.; et vid. Duke of Leeds v. New Radnor. 2 Br. Ch. C. 338. 519.

(6) 5 Price 482.; and see Mayor of York v. Pilkington, 1 Atkyns, 282.

(7) Cowp. 664. 4 T. R. 107. 6 East, 461 & 438. 10 East, 487.

(8) Steinson v. Heath, 3 Levinz, 400.

the fact of such purchase by sample in the market, though coupled with the subsequent delivery out of the market, sustain a count for toll as for corn brought into the market and there sold (1). The owner of the soil cannot distrain as damage feasant the goods of a pèrson who has wrongfully placed stalls or tables within the precincts of a fair or market without paying toll, although an action of trespass lies (2), nor can he so distrain on goods sold in a market (3). It is said, that the party has no remedy for the toll, if the goods are carried out of his jurisdiction (4). An action of trespass *vi et armis* is maintainable for disturbing a man's servants in collecting his toll *per quod servitium et emolumenta tolnetorum amiserit* (5); so an action lies for hinderance of a person from bringing goods to market, which would have been tollable (6). In an action on the case for disturbance of toll in a market, the owner may declare on his possession, without shewing a more formal title (7). A remedy by *distress* is incident to every toll which is due of common right (8), such as market toll, toll traverse, and port duty, in which instances it is not necessary, as in the case of toll thorough, to prescribe for the distress as well as for the toll (9). A distress for toll is said to be an exemption from the restrictions of the statute of Marlebridge, and may therefore be taken on the highway (10). The exemption from distress belonging to goods in a fair or market, or such as are the implements of trade, does not extend to a distress for toll (11); but it seems that the toll itself must arise within such fair or market; and therefore that goods found therein cannot be distrained for toll arising elsewhere (12). The distress may be made either on the thing itself for which the toll is due, as a horse for his toll thorough (13); or on a part of such thing, as on

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(1) The Bailiffs, &c. of Tewkesbury v. Diston, 6 East, 437.

(2) Mayor, &c. of Northampton v. Ward, 2 Stra. 1238. 2 Ld. Raym. 1589.

(3) Sawyer v. Wilkinson, Cro. Eliz. 627, 8.

(4) Noy, 37. Vin. Ab. Toll, (I.) sed quære etiam. Vin. Ab. Toll, I. Bro. Ab. Action sur le Case, pl. 70. cites 21 H. 7. 16. sed quære.

(5) Fitz. N. B. 91.

(6) 1 Salk. 248. 5 Mod. 359. S. C. Turner v. Stirling, 2 Ventris, 26.

(7) Escot v. Lanreny, Owen, 109. Dent v. Oliver, Cro. Jac. 43. 2 Saund. 114. in notes.

(8) Hickman's case, Noy, 37.

(9) Bradby on D. 193. 1st Ed.

(10) Cro. Eliz. 710. Smith v. Shepherd, 1 Inst. 131.

(11) Osbuston v. James, 2 Lutw. 1380. Vinkenstone v. Elden, Carth. 358. S. C. 1 Salk. 248. Mod. 104. Lev. 96, 7. S. C. Raym. 232. Ld. Raym. 385. 2 Stra. 1228.

(12) Bradby on D. 1st Ed. 194.

(13) Harrison v. Brough, 6 T. R. 706.

a cable or anchor for the toll of a ship (1); or on a sheep for the toll of the whole flock (2); and if it cannot be made on the subject of the toll, it may be made on any other goods of the person from whom it is due that may be found where the toll is due (3). Nor is it confined to the goods of such persons as may be strictly the owners of the things for which the toll is payable, as we have shown in a former place with regard to port duties (4). The remedies for wrongfully claiming or taking tolls were fully considered in the great case of the Corporation of London v. the Corporation of Lynn (5), on which occasion was revived the ancient writ *de essendo quietum de theolonio*, after having lain dormant for nearly five centuries (6). The House of Lords there decided, after hearing the opinion of the judges, that if toll be claimed of the individual members of a corporation exempt by charter, an action lies on this writ in the name of the corporation (7). Tenants in ancient demesne are also entitled to this writ (8) as well as to an action on the case (9). The writ *de essendo quietum de theolonio* is not merely prohibitory but remedial, on which the parties may plead to issue on a question of right (10). A corporation to whom it is directed cannot be attached for contempt in their corporate capacity for not returning it, but an attachment in the nature of a *pone* is the proper remedy to compel them to appear (11). The writ of *monstraverunt* is another process of a similar nature (12). Tenants in ancient demesne may have a writ of *essendo, &c.* and may join therein as in a *monstraverunt*, or sue it each for himself (13). An action on the case also lies for taking toll from one who is exempted, or where from other causes it is not due, or for taking more than is due (14). Thus, to put an instance analogous to the subject we are now considering—if the parishioners of B. ought

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(1) Prideaux v. Warne, 2 Lev. 96.; and see other cases, Bac. Ab. Distress, B.

(2) Smith v. Sheperd, Cro. Eliz. 710. Osbuston v. James, 2 Lutw. 1380.

(3) Vinkenstone v. Emden, Ld. Raym. 386. 1 Salk, 248. S. C.

(4) Id. ibid.

(5) Judgment of C. P. affirmed in D. Proc. 1 B & P. 487.

(6) 4 T. R. 130. Judgment of K. B. reversed; see 6 T. R. 778. 1 H. Bla. 206. S. C. affirmed. As to this writ, see Com. D. Toll, (H) 1. 4 T. R. 138.

(7) 1 B. & P. 487.

(8) F. N. B. 228.

(9) 2 Leon. 190.

(10) London v. Lynn, 1 H. Bla. 206.

(11) Id. ibid.

(12) 1 B. & P. 489. Cases cited. The whole practice is particularly to be found in 1 H. Bla. 206, &c.

(13) Fitz. N. B. 228. B. Com. D. tit. Ancient Demesne, H.

(14) 1 Salk. 12. Yelv. 13. Com. D. tit. Market, (F) 1.

to pass a ferry toll-free, every parishioner may have an action against the owner of the ferry to assert that right, where he sustains a particular loss by paying toll (1); but the not keeping of a ferry cannot be remedied by action at the suit of one of the parishioners more than any other person, but the defendant must be indicted (2). Trespass also lies (3); and if the cattle or goods of any one exempted are distrained for toll, he may replevy (4). The privilege of a tenant in ancient demesne is incident to his estate (5), without a special prescription or custom; and it is sufficient for the claimant to say, that he is tenant and inhabitant within the manor of D., which is *de antiquæ dominico*, &c., and generally that he ought to be free from toll, without saying for goods to be used there; for if exemption be in truth claimed for goods to be used in trade, that fact must be shown on the other side.—Notice that the person claiming to be privileged was tenant in ancient demesne, need not in strictness be alleged. (6)

A misuser or nonuser of the franchise in a matter essentially incident to it, and in which the public good is at stake, as an abuse in the court of piepoudre (7), or a neglect to appoint a clerk of the market (8), or in other matters of the like nature, is a ground of forfeiture. If excessive toll be taken, the statute of West. provides that the franchise shall be seised into the king's hands (9). This statute is explained to mean, not that the fair or market shall be absolutely forfeited, but that it shall be seised by the crown on office found, and retained in the king's hands until it be redeemed by the owner (10). The statute adds, that if excessive toll be taken by a bailiff or an inferior officer, without the consent of the lord, he shall restore the toll taken, and be imprisoned forty days (11). Lord C. B. Comyns indeed lays down the rule broadly, that if the owner of a market take outrageous toll, he does not forfeit the market, but the toll only (12). Tolls which are reserved for the private good of the lord are not necessarily incident to a fair or market, and therefore a forfeiture of

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(1) 1 Salk. 12. 16. Semb. 2 Mod. 352, 5.
(2) Paine v. Partridge, 1 Salk. 12. and 16, 17. 2 Bla. Com. 219. 2 Wils. 58. Bull. N.P. 78. 4 Burr. 2424.
(3) Lutw. 1329. 1 Salk. 248.
(4) Com. D. tit. Toll, (H.) 2.
(5) Lutw. 1146.
(6) 2 Lutw. 1146, 7.
(7) Palm. 82.
(8) Bro. Abr. tit. Franchises, pl. 22, 4. 2 Hen. 7. c. 11.
(9) 3 Edw. 1. c. 31.
(10) 2 Inst. 222.
(11) 3 Edw. 1. c. 31.
(12) Com. D. tit. Market, I.

toll may by law be incurred for misconduct in respect of it, without a forfeiture of the fair or market (1). If a fair be holden beyond the time limited by the grant, as for three days instead of two, the whole franchise is said in some books to be forfeited (2). Brooke, in his Abridgment, lays down the same doctrine in one part of his work (3), but in another part he makes this distinction,—that if the king grant to a person a fair for one day in the year, and the grantee hold a fair for two days, and claim this upon process in the exchequer, he shall forfeit his franchise; but if he claim one day by the patent, and another by prescription, which is found false in the prescription, he shall not forfeit his patent (4). But the statute 2 Edw. 3. c. 15., which was passed to regulate the duration of fairs, enacts, that the lords shall not hold them over the time appointed, on pain of their being seised into the king's hands, there to remain till a fine be made for the offence, after it has been duly found that the lords held them longer than they ought; so that, according to this act, the owners are to be fined, and the franchises suspended, but not absolutely forfeited (5). If a market be granted to be holden on Friday in every week, and it be holden on Friday and also on Monday, the tolls only for the excess of time are forfeited (6). But if it be granted to be holden on Friday, and it be holden on another day, and not on Friday, the whole franchise will be forfeited to the king, and the party fined (7). So the franchise of a fair or market may be forfeited by nonuser, and every incident or subordinate claim, as the court of piepoudre, &c. will of course be also forfeited (8). But where there are several franchises, and one of them is misused or neglected, that one only, and not the others, will be forfeited, although they are all contained in the same grant. (9)

(1) Per Curr. Palmer, 82.
(2) 2 Rol. Abr. 124. l. 30. Com. Dig. Market, I. Lib. Assiz. Anno 22 Edw. 3. pl. 34.
(3) Bro. Abr. Franchise, pl. 14.
(4) Bro. Abr. Franchise, pl. 22.
(5) 2 Edw. 3. c. 15.; but see last notes, and Y. B. 22 Edw. 3. pl. 34.
(6) 2 Rol. Abr. 124.
(7) 2 Rol. Abr. 124. Market, Letter F. Bro. Abr. Franchise, pl. 22.
(8) Palmer, 82.
(9) Id. ibid. Bro. Abr. Franchise, pl. 14. supra.

## CHAP. X.

### *Of Hawkers and Pedlars.*

THE trade carried on by persons keeping fixed establishments is, generally speaking, much more beneficial to the state than that of itinerant *hawkers and pedlars*. The character of the local trader is better known, and therefore there is greater security for the respectability of his dealings. He contributes also, by the number of persons he employs and the taxes he pays, much more than the itinerant trader to promote the wealth and increase the prosperity of the country. Hence has arisen the expediency of framing laws which may operate as a restraint upon itinerant traders, may diminish their number, and, while they prevent any illegal practices, may, by obliging such persons to take out licences, and to submit to certain other regulations, be productive of revenue and profit. Hawkers and pedlars.

The late hawking and pedling act, 50 Geo. 3. c. 41., repealed the act of Will. (9th & 10th W. 3. c. 27.) for licensing hawkers and pedlars, and all acts for continuing, altering, or regulating the duties thereby imposed, so far as they related to such duties. The 50 Geo. 3. directed that licences already granted should remain in force till Sept. 1. 1810, and that all future licences, which are taken out annually, and not granted till the duties are paid, should continue till August 1, next after the dates of the licences (1). The power of licensing and the management of the duties were transferred, with increased salaries, to the commissioners for licensing and regulating hackney coaches (2). Before the licence is taken out, a certificate must be produced of the good character of the applicant, signed by a clergyman and two reputable inhabitants of the place in which he has been in the habit of residing (3). The clause imposing the duty provides, that there shall be paid by every hawker, pedlar, petty chapman, and every other trading person and persons, going from town to town or Licences.

(1) s. 2. 9, 10.
(2) s. 3. and 11.
(3) 50 Geo. 3. c. 41. s. 12, 13. and see Form. Burn J. tit. Hawk. & Pedl. Dick. J. tit. id.

to other men's houses, and travelling either on foot or with horse, horses, or otherwise, in England, Wales, or Berwick, carrying to sell or exposing to sale any goods, wares, or merchandize, a duty of £4 for each year for every person so travelling with a horse, ass, mule, or other beast bearing or drawing burthen, the sum of £4 yearly for each beast he shall so travel with, over and above the said first mentioned duty of £4 (1). And the 17th section provides, that if any such hawker, pedlar, or petty chapman, or other trading person so travelling as aforesaid, shall trade as aforesaid, without, or contrary to, or otherwise than as shall be allowed by such licence, he shall forfeit for every offence the sum of £10; and if a person trading under or by virtue of any licence to him or her granted as aforesaid, upon demand made by any person or persons authorized or appointed to demand any such licence by the commissioners for licensing hawkers, pedlars, and petty chapmen, for the time being, or any two of them, under their hands and seals, and upon producing or showing such authority or appointment to such person so trading as last aforesaid, or upon demand made by any justice of the peace, mayor, constable, or other officer of the peace, of any county, riding, division, town corporate, borough, or place where he or she shall so trade, or by any officer of the customs or excise, or by any person to whom such hawker, pedlar, or petty chapman shall offer any goods to sale, shall refuse to produce or show his or her licence for so trading as aforesaid, or shall not have his or her licence ready to produce to a person so authorized, or to such justice of the peace, mayor, constable, or other officer of the customs or excise, that then the person so refusing, or not having his or her licence ready to produce and show as aforesaid, shall forfeit ten pounds, to be recovered and applied as therein-after mentioned; and for non-payment thereof shall suffer as a common vagrant, and be committed to the house of correction (2). To warrant a conviction for offering goods to sale and not producing a licence, the charge must bring the defendant within the description of persons requiring a licence; it is not sufficient to allege that he sold as a hawker and pedlar. A conviction, which was removed into the K. B. by *certiorari*, set forth that one T. P., gent., came before the justice, and informed him that T. L. was found offering to sale silk handkerchiefs, and trading as a hawker, pedlar, or petty chapman; that the said T. L. did then and there offer to sell to him the said T. P. a parcel of

(1) s. 6.

(2) 50 G. 3. c. 41. s. 17.

silk handkerchiefs, but did not, when required, produce a legal licence, and confessed that he did offer them for sale, and that he had no licence for selling them; whereupon he was convicted. Two exceptions were taken to the conviction: 1st. With respect to the person, that he was not brought within the description of the acts, as going from town to town, and travelling on foot, or with horse, horses, or otherwise, but he was only generally described to be a person that traded as an hawker and pedlar, and offered to sell a parcel of the handkerchiefs to the informer. 2d. With respect to the offence: the evidence was the defendant's own confession, and that extends no further than barely to the simple fact of offering to sale silk handkerchiefs in the manner charged upon him. The court held that a single act of selling a parcel of silk handkerchiefs to a particular person is not a proof that the defendant is such a hawker, pedlar, or petty chapman, as ought to take out a licence by virtue of the acts of parliament. The conviction was therefore quashed (1). A person forging a licence, or travelling with or producing such forgery, is liable to forfeit £300 (2). Any person may seize and detain a hawker found trading without a licence, or refusing to produce it according to the act, after being required so to do for a reasonable time, in order to give notice to a constable or other peace officer, who shall carry such person so seized, unless he in the mean time produce his licence, before a justice of the place where the offence is committed, who shall, on confession or proof on oath by one witness of his having so traded and not produced his licence, convict the offender, and thereupon by his warrant cause the before-mentioned sum of £40 to be levied by distress, and in the meantime commit the offender to the house of correction (3). *Licensed hawker* must be placed in large roman capitals on every vehicle for the conveyance of goods, and on every room in which he trades, and on the handbills distributed, together with the number or mark of distinction printed on his licence, on penalty of £10 (4). Unlicensed persons so marking their respective vehicles for goods, or rooms, &c. forfeit £10 (5). A person letting out, hiring, or lending a licence, or trading with a licence granted to another person, or in which his own name is not inserted as grantee, forfeits the sum of £40; his licence becomes void on conviction, and he is incapable of holding another (6). But

(1) The King v. Little, 1 Burr. 609. The King v. Buckle, 4 East. 346. 11 East. 181.
(2) 50 Geo. 3. c. 41. s. 18.
(3) 50 G. 3. c. 41. s. 20.
(4) 50 G. 3. c. 41. s. 14.
(5) s. 15.
(6) 29 G. 3. c. 26. s. 13 3 & 4 Ann. c. 4. s. 4.

it has been decided, that sending out a servant with a licence to sell coals for the principal, on the sale of which such servant had a per-centage, was not such a lending of a licence as would support an action for the penalty (1). And the 50 Geo. 3. c. 41. expressly provides, that nothing contained in it shall subject to the penalty a servant travelling for a licensed master, with the licence of such master, &c. for his benefit, or a licensed master sending such servant to travel with such licence.

Exemptions.

The statutes do not impose any restrictions on a person exposing to sale or selling goods in a public mart, market, or fair (2). But the exemption extends only to sales in the public market-places, and on the days of market; and therefore if a hawker sells his goods in a part of a market town, not the open market-place, though on a market-day and during the market hours, he incurs the penalty (3). So the statutes do not prohibit persons from selling printed papers licensed by authority, or fish, fruit, or victuals; nor the real workers or makers of any goods or manufactures of G. B., or their children, apprentices, known agents, or servants usually residing with them, from carrying such goods or manufactures abroad, exposing them to sale, and selling them by retail or otherwise, in any mart, market, or fair, and in every city, borough, town corporate, and market town; nor any tinkers, coopers, glaziers, plumbers, harness menders, or other persons usually trading in mending kettles, tubs, household goods, or harness, from going about and carrying with them proper materials for mending the same (4). No *wholesale* traders in lace, or woollen, linen, silk, cotton, or mixed goods, or goods or manufactures of G. B. (5), are to be deemed hawkers, &c.; and such persons, and those employed under them, to sell by wholesale only, may go from house to house to any customer who sells again, without being subject to any penalty (6). An exemption has been also made in favour of persons carrying about coals in carts, or on horses, mules, or asses, and selling them by retail. (7)

(1) Hodgeson v. Flower, 2 Campb. 292.

(2) Ib. s. 17. and 50 Geo. 3. c. 41. s. 5.

(3) Rex v. Redfearne, 4 T. R. 274.

(4) 50 Geo. 3. c. 41. s. 23. 29 Geo. 3. c. 26. s. 21. 9 & 10 W. 3. c. 27. s. 9.

(5) Maxwell v. Mayre, 1 Bla. Rep. 271—364.; and 55 Geo. 3. c. 71. as to hawkers, &c. in Scotland.

(6) 52 Geo. 3. c. 108. s. 1. 29 Geo. 3. c. 26. s. 20.

(7) 52 Geo. 3. c. 108. s. 2.

No person coming within the description of the statutes as a hawker or pedlar, can lawfully, either by opening a shop and exposing goods to sale by retail in any place in which he is not a householder or resident, or by any other means, sell goods, either by himself or any other person, by outcry or auction, under a penalty of £50 (1). Upon this regulation it has been held, that a person travelling from town to town, and having packages of books, &c. sent after him by public conveyance, and taking rooms at each town, and there selling such books by retail by auction, is a trading person within the meaning of the act (2); and a licensed auctioneer going from town to town in a public stage coach, and sending goods by public waggons, and selling them on commission, by retail or by auction, at the different towns, is a trading person within the meaning of this section, and must take out a hawker's and pedlar's licence (3). But a licensed hawker, opening a room in a place in which he is not a householder, nor a usual resident, and selling there by retail, does not commit an offence within this statute, for to constitute the offence, the selling must be by outcry, &c., or by some mode of sale at auction (4). Such hawker or pedlar cannot sell teas or spirits, though he have a permit, under all the penalties of being without a licence (5). So if a pedlar have in his possession foreign cambric or French lawn, he forfeits it, his other goods, and his licence (6). An hawker convicted of dealing in goods, either smuggled or fraudulently obtained, forfeits his licence, and is incapable of obtaining a new one, besides incurring the penalties for such illicit trading (7). Any person duly licensed to trade as an hawker and pedlar may set up trades in any place where he is a resident, though not brought up seven years apprentice, notwithstanding the 5 Eliz. to the contrary; and if prosecuted, may plead the general issue, and have double costs (8); and no such persons, their wives, or children, can be removed, until they become actually chargeable to such parish or place (9). All pecuniary penalties above £20 may be sued for in the courts at Westminster, if not exceeding £20, before a justice (10). But imprisonment under the act is not to exceed three months. (11) Disqualifications.

(1) 50 Geo. 3. c. 41. s. 7. and 29 Geo. 3. c. 26. s. 16.
(2) Dean qui tam v. King, 4 Barnw. & Ald. 517.
(3) Rex v. Turner, 4 Barn. & Ald. 510.
(4) Allen v. Sparkhall, 1 Barn. and Ald. 100.
(5) 9 Geo. 2. c. 35.
(6) 7 Geo. 3. c. 43. s. 7, 8, 9.
(7) 50 Geo. 3. c. 41. s. 16.
(8) 50 Geo. 3. c. 41. s. 22.
(9) Id. ibid.
(10) 29 Geo. 3. c. 26. s. 22, 23. 50 Geo. 3. c. 41. s. 24, 5.
(11) Id. s. 24. and id. s. 26.

## CHAP. XI.

### *Of Weights and Measures, Coins and Money, and Notes.*

THE appointment of standard weights and measures, which, as the criteria of value, ought to be as certain and uniform as possible, is delegated by the law of this country to the king, as in Normandy it was vested in the duke. However, although this power is said to be inherent in the crown, it has been exercised from the earliest times by the legislature (1). Lord Coke, in his chapter on the ancient and now abolished office of the clerk of the market of the king's household, observes, that it was part of the duty of this officer to keep a court and enquire of weights and measures, whether they were according to the king's standard or not; and for that purpose to make process to sheriffs and bailiffs to return panels before him, and to deliver estreats, into the exchequer, of things concerning his office (2). The same author observes, that in his time the exertions of this officer were not much required, for that the justices of assize, justices of oyer and terminer, justices of the peace, sheriffs in their tourns, and lords in their leets, might and did enquire of false weights and measures. (3) In treating of this subject, we shall inquire, *first*, what are the standard *weights* and *measures*; *secondly*, how far the laws for observing them are obligatory on the public,—the provisions for keeping standards in market towns for examining weights and measures, and destroying such as are found false or defective. (4)

The standard of *weights* was originally taken from corns of wheat, whence the lowest denomination of weights we have is still called a grain; thirty-two of which are directed by the

(1) Grand Coutumier, c. 16. 1 Bla. Com. 274.
(2) 4 Inst. 273.
(3) Id. ibid.
(4) Tables of Weights and Measures will be found in the Appendix. As to Weights and Measures in general see Burn, J. tit. Weights and Measures.

statute called *compositio mensurarum* to compose a penny-weight, whereof 20 make an ounce, twelve ounces a pound, and so upwards;—and upon these principles the first standards were made; which, being originally so fixed by the crown, their subsequent regulations have been generally made by the king in parliament. Thus, under king Richard I., in his parliament holden at Westminster, A. D. 1197, it was ordained, that there should be only one weight and measure throughout the kingdom, and that the custody of the assize, or standard of weights and measures, should be committed to certain persons in every city and borough (1), from whence the antient and now exploded office of the king's aulnager, whose duty it was, for a certain fee, to measure all cloths made for sale, seems to have been derived (2). This ordinance of king Richard was frequently dispensed with in king John's time for money, which occasioned a provision to be made for inforcing it in the great charters of king John and his son (3). These original standards were called *pondus regis* and *mensura domini regis*; and are directed, by a variety of subsequent statutes, to be kept in the exchequer, and all weights and measures to be made conformably thereto (4). The legal *weights* in common use throughout Great Britain, are troy and avoirdupois; the former (5) consisting of grains, pennyweights, ounces, and pounds, whereof twenty-four grains make a pennyweight, twenty pennyweights an ounce, and twelve ounces a pound, by which bread (6), gold, silver, and apothecaries medicines are weighed; and to this weight corn measures are reducible, as 8lbs. troy make a gallon, 16lbs. a peck, and consequently 64lbs. a bushel. The statute 12 H. 7. c. 5. directs that every bushel shall contain 8 gallons of wheat, and every gallon, 8lbs. troy, and every pound, 12 ounces, on the penalty of £20, upon every city, borough, town or place having the keeping of common measures, that shall keep any other bushel or gallon (7). And by the statute 13 & 14 W. 3.

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(1) Hoveden, Matth. Paris.

(2) 1 Bla. Com. 275, 6. abolished by 11 & 12 W. 3. c. 20.; and see 57 Geo. 3. c. 109. Com. Dig. tit. Trade, (C. 5.) Hard. 205. 215.

(3) 9 H. 3. c. 25.

(4) 14 Edw. 3. st. 1. c. 12. 25 Ed. 3. st. 5. c. 10. 16 Ric. 2. c. 3. 8 Hen. 6. c. 5. 11 Hen. 6. c. 8. 11 Hen. 7. c. 4. 22 Car. 2. c. 8.

(5) 2 Beawes, L. M. See 4 Inst. 273. Com. Dig., Leet, L. 6. Dalton c. 112. Noble v. Durell, 3 T. R. 274.

(6) 4 Inst. 273; in corporation towns. See 2 Beawes, 313. But see 31 Geo. 2. c. 29. s. 5. by avoirdupois.

(7) And see 22 Car. 2. c. 8. 22 & 23 Car. 2. c. 12., and cases, infra.

c. 5. a legal Winchester bushel, according to the standard in the exchequer, shall be round, with a plain bottom 18½ inches wide throughout, and eight inches deep. Liquid *measures* are also dependent on this weight, as their concavities correspond in their different sizes thereto, from a pint, consisting of 12 ounces or a pound, up to a ton, containing 252 gallons, and weighing 2016lbs., or 1890 avoirdupois; two pints make a quart, four quarts a gallon, containing 231 cubical inches; 63 gallons a hogshead, 42 a tierce, 126 a pipe, and 252 a ton of brandy, cider, wine, &c. Refiners and jewellers also make use of this *weight* in part; the former calling their smallest fractions blank, of which 24 make a perit, 20 perits a droite, 20 droites a mite, 20 mites a grain, and then as above. The jewellers divide the ounce into 152 parts or carats, *and those into* grains, whereof four make a carat (1). By *avoirdupois* weight (2), which was introduced by custom, but allowed by the statute *compositio ponderum*, all gross goods and base metal are weighed; such as grocery, drugs, resin, pitch, tar, tallow, soap, butter (3), cheese, iron, lead, copper, alum, flesh, wax, wool, hemp, flax, steel, &c., and bread by 31 G. 2. c. 29: its component parts are, drams, ounces, &c.; of which 16 drams make an ounce, 16 ounces a pound (3), 28 pounds a quarter of a hundred weight or 112 pounds, and 20 hundred weight or 2240 pounds a ton; but besides this hundred weight there is another, called the stannary hundred, by which tin &c., is weighed to the king. The avoirdupois ounce is lighter than the troy ounce by near a twelfth part, 51 ounces troy being equal to 56 avoirdupois; but the avoirdupois pound is heavier than the troy, 17 pounds of this latter being equal to fourteen pounds of the other. Wool is generally sold by the tod or clove, allowing seven pounds to the clove, 14 pounds to the stone, 28 pounds to the tod, 128 pounds to the wey, 364 pounds to the sack, and 4368 pounds to the last. Lead is bought by the fodder, which at London, Newcastle, &c. weighs 19½ hundred weight of 112 pounds; but at Hull, 19½ stannary hundred of 120 pounds; and at Chester, &c., it is still different. In Essex, butter and cheese are weighed by the clove or half stone, being 8 pounds;

(1) See stat. Comp. Mens. 31 Ed. 1. 12 Hen. 7. s. 5. 4 Inst. 274.

(2) See Com. Dig., Leet, L. 7. 13 & 14 Car. 2. c. 26. 4 Inst. 273.

(3) Noble v. Durell, 3 T. R. 271.; and see the statutes there collected.

of which 32, or 256 pounds is a wey; but in Suffolk, 42 cloves or 336 pounds are allowed to the wey. Of butter, a firkin must weigh 56 pounds, and that of soap 60 pounds; and four firkins of either make a barrel. The stone of beef at London is 8 pounds, but in the country it is commonly 14 pounds; horse-racers also reckon 14 pounds to the stone; and it is the same with iron, shot, or wool; double the quantity of iron and shot being called a quarter; though a stone of sugar, cinnamon, nutmegs, pepper, or alum, is but 13½ pounds. A faggot of steel is 120 pounds, and a burden of gad steel 180 pounds. A barrel of gunpowder is 100 pounds, and 24 barrels make a last. A seam of glass is 24 stone of five pounds each, or 120 pounds. A truss of hay 56 pounds; and a load or ton of it 36 trusses; raw silk is sold here by the pound, as it is called, of 24 ounces; or more properly one pound and a half avoirdupois; but organzines, traines, &c. by the common pound of 16 ounces (1). The last of Great Britain and Ireland contains 10½ quarters; the quarter is eight bushels, and each bushel 8 gallons or 4 pecks, the last being equal to that of Amsterdam. The *long* or applicative measures are the yard and ell, the former for measuring all silks, woollens, &c. the latter used only for linens.

Most nations have regulated the standard of *measures of length* by comparison with the parts of the human body; as the palm, the hand, the span, the foot, the cubit, the ell (ulna or arm), the pace, and the fathom. But as these are of different dimensions in men of different proportions, our ancient historians inform us, that a new standard of longitudinal measure was ascertained by king Henry the first, who commanded that the ulna or ancient ell, which answers to the modern yard, should be made of the exact length of his own arm (2). And one standard of measures of length being gained, all others are easily derived from thence, those of greater length by multiplying, those of less by subdividing, that original standard. Thus by the statute called *composito ulnarum et perticarum*, five yards and a half make a perch, and the yard is subdivided into three feet, and each foot into twelve inches, which inches will be each of the length of three grains of barley. Superficial measures are derived by squaring those of length, and measures of capacity

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(1) Stat. Comp. Pond. 25 Edw. 3. c. 9. 31 Ed. 3. c. 8. 11 Hen. 7. c. 4. Dav. 8. b.

(2) Will. Malmb. in vit. Hen. 1. Spelm. Hen. 1. apud Wilkins, 299.

by cubing them (1), the modern ell being a yard and a quarter. It may also here be added, that a geometrical pace is reckoned five feet, a fadom or fathom six feet, a rod, pole, or perch sixteen feet and a half, and of these forty make a furlong, and eight furlongs an English mile, which by a statute of Henry the eighth ought to be 1760 yards, or 5280 feet, that is, 280 feet more than the Italian mile. (2)

All measures whatsoever are either receptive or applicative. The measures of capacity, or receptive measures, are again comprehended under the denomination of liquid and dry measures. The liquid for wine, brandy, vinegar, cider, beer, ale, and such other goods. The dry, for grains, salt, coals, and the like. Applicative measures are either the yard, ell, cane, aune, and other such measures, for linen and woollen cloths, silks, laces, ribbons, and other such goods, or the inch, foot, &c. for wood, or other longer measures of that nature for land, &c.

The standard measures being thus established, the laws for observing them are obligatory upon the public. Thus the stat. 16 Car. 2. c. 19. enacts, that whoever shall sell, buy, or keep any other weight, measure, or yard, not according to the standard, or keep any such whereby any thing is bought or sold, shall forfeit five shillings on conviction before one justice, mayor, or other head officer, on oath of one witness; to be levied by the churchwardens and overseers, or some or one of them, to the use of the poor by distress. In default of distress, imprisonment till paid (3). But water measure, viz. five pecks to the bushel in sea-port towns, was to continue as usual (4), except in the measuring of corn or grain, ground or unground, and salt (5). The Stat. 22 Car. 2. c. 8. enacts, that if any person shall sell any sort of corn or grain, ground or unground, or any kind of salt usually sold by the bushel, by any other bushel or measure than agreeable to the standard, marked in his majesty's exchequer, commonly called the Winchester measure, containing eight gallons to the bushel, strucken even by the brim by the seller, and sealed, he shall forfeit forty shillings on conviction before one justice mayor, or other head officer, on oath of one witness, to be levied by the churchwardens and overseers, or some one of

(1) 1 Bla. Comm. 274, 5.
(2) 2 Beawes, 332.
(3) 16 Car. 1. c. 19. s. 2.
(4) Id. s. 7.
(5) 22 Car. 2. c. 8. s. 2.

them, to the use of the poor by distress; in default of distress, imprisonment till paid (1). And by 22 & 23 Car. 2. c. 12., whoever shall sell or buy any corn, ground or unground, or salt, in any other measure, and that without shaking the bushel by the buyer, shall forfeit beside all the corn, grain, or salt to the person or persons complaining (2). A custom to sell corn by any other than the Winchester measure is therefore illegal and void (3). And the statutes are not repealed by subsequent acts, which allude, for other purposes, to an existing *customary* measure (4). If the *reddendum* in a renewed lease be "so many quarters of corn," it will be understood to mean quarters reckoning the bushel at eight gallons, although old leases before the stat. 22 & 23 Car. 2. contained the same *reddendum*, and although, till lately, the lessees paid by composition, reckoning the bushel at nine gallons (5). So, a custom that every pound of butter sold in a particular market town shall weigh eighteen ounces is invalid; for no rule can prevail in opposition to the statutes; if it could, said lord Kenyon, it might as well be contended that a custom might prevail in a particular place, that a less number of days than seven should constitute a week, or that a less space of ground than an acre should be called an acre (6). But the statutes do not render it illegal to sell butter in lumps, each containing more or less than a pound, provided the sale be not specifically of a pound (7). Where a consignee in this country had purchased 100 lasts of wheat, the freight was held to be recoverable for so many lasts as in the bill of lading English measure, though the last at Dantzic, from whence the corn was shipped, was larger by a difference varying from $\frac{1}{20}$ to $\frac{1}{10}$ than the English measure, and in this case was estimated by the jury at about 96 Dantzic lasts to the 100 English. (8)

The standard weights and measures are directed to be kept throughout the kingdom, and examiners are to be appointed by the magistrates first. By various statutes, from 14 Ed. 3. st. 1. c. 12. to 37 Geo. 3. c. 30., directions are given for sending

(1) 22 Car. 2. c. 8. s. 2.
(2) 22 & 23 Car. 2. c. 12. s. 2.
(3) Hockin v. Cooke, 4 T. R. 314. The Master, &c. of St. Cross v. Lord Howard de Walden, 6 T. R. 338. Rex v. Major, 4 T. R. 750. R. v. Arnold, 5 T. R. 353.
(4) 4 T. R. 753.
(5) The Master, &c. of the Hospital of St. Cross v. Lord Howard de Walden and another, 6 T. R. 338.
(6) Noble v. Durell & others, 3 T. R. 271.
(7) Id. ibid.
(8) Moller v. Living, 4 Taunt. 102.

measures, according to the standard in the exchequer, into the different parts of the kingdom (1). The statute 8 Hen. 6. c. 5. provides, that in every city, borough, and town, there shall be a common balance, with common weights sealed, and according to the standard of the exchequer, upon the common cost of such city, borough, or town, in the keeping of the mayor or constable, on pain of £10 for every city making default, for a borough £5, and a town where there is a constable, forty shillings; at which balance all the inhabitants may freely weigh without any fee, except of foreigners, for every draught within the weight of forty pounds, a farthing; and for every draught betwixt forty pounds and one hundred pounds, a halfpenny; and for every draught betwixt one hundred pounds and one thousand pounds, a penny at the most. And justices of the peace, mayors, bailiffs, and stewards of franchises may enquire of offenders against this ordinance, and do execution of those that are found faulty, by inquests or by their own examination. By the 22 & 23 Car. 2. c. 12. the *clerk* of the *market*, and where there is none, the mayor or head officer, or other person having benefit of the market, shall cause to be *sealed* all measures duly gauged brought to him for that purpose (2); and by 22 Car. 2. c. 8. if any mayor, lord of the liberty, or other person authorized to mark or seal measures, shall neglect or refuse, being required to seal or mark any bushel, half-bushel, or peck duly gauged, he shall forfeit for the first offence £5, and for every other offence £10, on conviction, by presentment, or indictment at the county sessions, half to the prosecutor, and half to the poor, to be levied by distress, and for default of distress, to be imprisoned by warrant of the justices at such sessions till payment be made (3); and no person shall take for sealing or marking a bushel more than one penny; for an half bushel or peck more than one halfpenny; for a gallon, pottle, quart, pint, or half-pint, more than one farthing; and if any person shall take more, he shall forfeit £5 to the poor, on conviction before one justice, by the oath of one witness, to be levied by the church-wardens or overseers by distress; in default of distress, imprisonment till paid (4); and the mayors and other head officers in market towns shall, twice a year or oftener cause all weights and measures within the same to be brought before them and

(1) Dick. J. tit. Weights and Measures. Burn, J. tit. id. sect. 2. 31 Ed. 3. st. 1. c. 2. 12 Hen. 7. c. 5.

(2) s. 4.

(3) s. 3.

(4) s. 4.

examined, and such as they find defective, to be broken and burnt, and the offender shall forfeit to the mayor or other officer, for the first time, six shillings and eight-pence; for the second time, thirteen shillings and four-pence; and the third time, twenty shillings and be set on the pillory. Two justices, one to be of the quorum, may hear and determine the defaults of the said mayors or other head officers in that behalf, and also of all buyers and sellers doing contrary to the statute, as well by examination as by inquiry and set fines and amerciaments, and make process thereupon, as if they were indicted before them for breaking the king's peace (1). Also the constable shall search if any persons use any other measure than according to the standard, or shall strike in any other manner than even by the wood or brim, or shall sell or buy by a measure unsealed; and if he find any unsealed measure, he shall *break* the same, and shall present the offenders at the next private or quarterly sessions (2). If any mayor or other head officer shall suffer any other measure to be used than according to the standard and sealed, he shall forfeit £5, half to the prosecutor and half to the poor, on conviction by presentment or indictment at the county sessions, to be levied by distress, and for default of distress to be imprisoned by warrant of the justices till paid (3). Balances and weights of exchequer standard are also to be kept in all mills, on a penalty of twenty shillings, which may be examined by the persons appointed under 35 G. 3. c. 102., and millers must weigh corn brought to them for grinding both before and after it is ground, under a penalty of forty shillings (4). Notwithstanding the punishments aforesaid appointed by statute for selling by false weights and measures, it is also an offence at the common law, and may be punished by indictment, fine, and imprisonment. (5)

The justices of the peace at every quarter sessions were required, by the statute 35 G. 3. c. 102. to appoint persons to *examine weights* and *balances*, and to *seize* and *destroy* those that were false or unequal, and a penalty was imposed on the person in whose possession the same were found, which part of the said act is by 37 G. 3. c. 143. repealed (6); and it is enacted (7), "that the justices at their respective *petty sessions*

(1) 11 Hen. 7. c. 4.
(2) 22 Car. 2. c. 8. s. 6.
(3) 22 & 23 Car. 2. c. 12. s. 3.
(4) 36 Geo. 3. c. 85.
(5) Cowp. 324. 3 Chitty's Crim. L. 995.
(6) 35 Geo. 3. c. 102.
(7) 37 Geo. 3. c. 143. s. 1.

within their divisions, districts, and places, may appoint one or more person or persons, who shall have power to examine the weights and balances within such division, district, or place." This section, however, only extends to such divisions, &c. as were known and recognized at the time when the act passed, and therefore an appointment made under this act at a petty sessions by two justices for a district, which they had, without the consent of the other magistrates, created within the last five or six years, was held to be illegal (1). The person so appointed (having been first sworn duly and faithfully to execute such office) is required by the statute, as often as the said justices shall direct, in the day-time to enter into the shop, mill, house, outhouse, and other premises near thereto, and into the stall or standing place of every person who shall sell by retail and weight any wares, provisions, goods, or chattels whatsoever, and search for, view, and examine all the weights and balances, and seize those not according to the standard in the exchequer, or any false or unequal balance there found, and shall detain the same to be produced at such petty sessions, upon hearing the information; and the person in whose custody the same shall be found, shall, upon conviction in such petty sessions upon view, confession, or oath of one witness, forfeit not exceeding twenty shillings, nor less than five shillings, as such sessions shall think fit, together with the costs, which may be levied by distress, by warrant of two justices; who shall cause such false weights and balances to be *broken* and rendered useless, and the materials thereof to be sold, and the money arising from such sale, together with the amount of such forfeitures, shall be paid to the treasurer of the county, to be applied in carrying those acts into execution, and the residue, if any, shall go to the county stock; and such justices shall sign a return of the sums so raised, and cause the same to be transmitted to the clerk of the peace at every quarter session (2); and the justices shall purchase for the use of their respective counties, out of the county rate, proper weights according to the standard in the exchequer; which shall be deposited for the inspection of all persons, either with the respective clerks of the peace, or with some proper person in such convenient place within each county as the justices shall direct, and shall be produced by the person in whose custody

(1) Rex v. The Justices of Devon, 1 Bar. & Ald. 588 on a mandamus for allowing the officer his salary.

(2) 35 Geo. 3. c. 102. s. 2. 37 Geo. 3. c. 143. s. 2, 3.

they are lodged (upon reasonable notice), at such time and place as any person shall by writing under his hand require and appoint, on paying the reasonable charges of producing the same (1); and the sessions may allow to the inspectors so appointed, a reasonable recompence for their trouble, to be paid out of the county rate (2). But if the majority of the inhabitants of any parish, township, or place, be desirous that any person shall be specially appointed to examine the weights and balances within such place, and shall at a vestry to be holden for that purpose, nominate one or more substantial householder or householders, to be approved at the petty sessions for the division, such person being so approved shall have the same power as any person appointed for the district (3): provided also, that no such appointment shall be made until the inhabitants have procured standard *weights* to be *deposited* with the *person* so appointed, for the use of such place; and such petty sessions may order the charges of procuring such weights, and the recompence to be allowed to the person so appointed for his trouble, to be paid out of the poor rate of such place (4). A person *obstructing* the officer so duly authorized to examine such weights and balances, or if seller or retailer refuse to *produce* them for examination, he shall, on conviction on oath before one justice, forfeit not exceeding forty shillings nor less than five shillings, as such justice shall adjudge, to be levied and applied as aforesaid (5): provided, that persons punished under this act shall not be otherwise punished by any other law (6); and courts leet, bodies politic or corporate, may appoint as before (7); and all the clauses contained in 35 G. 3. c. 102. shall continue in force in the same manner as is in the 37 G. 3. enacted, except where they are altered or repealed by that statute (8). A form of conviction is given, and no certiorari allowed. But it is provided that no person shall be prosecuted under this act, without information on oath in one month after the offence is committed (9). All these regulations having been found ineffectual, and frauds being frequently committed by persons using false and deficient measures, by which the poor in particular were greatly injured, an act was passed in the 55th of

(1) 35 Geo. 3. c. 102. s. 7.
(2) s. 4. See 1 Barn. & Ald. 588.
(3) 37 Geo. 3. c. 143. s. 4.
(4) Id. s. 5.
(5) 35 Geo. 3. c. 102. s. 3.
(6) Id. s. 5.
(7) Id. s. 6.
(8) 37 Geo. 3. c. 143. s. 6.
(9) 35 Geo. 3. c. 102. s. 8.

the king, which after reciting these grievances in the preamble, and "that it would tend to prevent such pernicious and fraudulent practices, if the justices of the peace throughout England and Wales were empowered to appoint proper persons to examine the measures within their respective jurisdictions, and to punish offenders in the premises," provides that justices in petty sessions may so appoint one or more proper persons to examine measures within their division (1). These examiners duly appointed, may enter shops and houses and places of sale of any person selling by retail any goods whatsoever, and examine all measures of capacity therein, and seize all deficient measures, which shall be forfeited and broken, on conviction at the petty sessions, together with any sum from twenty shillings to five shillings as a penalty, which, together with the costs, may be levied by warrant of distress, and in default thereof imprisonment not exceeding one month, or till paid (2). Obstructing any examiner of measures, or not producing measures for examination, is punished on conviction before a justice, by a penalty from £5 to forty shillings, to be recovered as before mentioned (3). The forfeitures under this act are to be applied towards defraying the expence of carrying it into execution, and returns thereof are to be made by the justices to the clerk of the peace at every general quarter sessions (4). The quarter sessions may allow reasonable recompence to the examiners for trouble out of the county rates (5). Justices *in quarter sessions* (6) may purchase proper measures for the use of their respective counties and other limits, to be deposited with the clerks of the peace, to be produced by them on notice in writing given, and reasonable costs of production paid. The majority of inhabitants in any parish or place desirous that any persons shall be specially appointed to examine the measures therein, are empowered to nominate five householders as examiners therein (7), proper measures having been first obtained (8). Certiorari to a court at Westminster is expressly denied by this act (9); all prosecutions must be founded on information on oath within six weeks after the offence committed, and persons convicted thereunder are not liable to punishment under any other law (10).

(1) 35 Geo. 3. c. 43. s. 1.
(2) s. 2.
(3) s. 3.
(4) s. 4.
(5) s. 5.
(6) Quære. See s. 6.
(7) s. 7.
(8) s. 8.
(9) s. 9.
(10) s. 13 and 11.

The power of corporate bodies, persons appointed at courts leet, and other persons, to examine and destroy measures in their jurisdictions, is not taken away. (1)

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The *money*, *coin*, and *notes* of a country are used both as measures of value and as equivalents for property: In this last respect, money differs from all other measures; and to the combination of the two qualities, the principal difficulties attending it are to be ascribed. These two qualities can never be brought perfectly to unite and agree; for, if money were a measure alone, and made like all other measures, of a material of little or no value, it would not answer the purpose of an equivalent; and if it is made in order to answer the purpose of an equivalent, of a material value, subject to frequent variations, according to the price at which such material sells in the market, it fails on that account in the quality of standard, or measure, and will not continue to be perfectly uniform, and at all times the same. In all civilized nations, money has been made either of gold, or silver, or copper, frequently of all three, and sometimes of a metal composed of silver and copper in certain proportions commonly called billon. It has been found by long experience, and by the concurrent opinion of civilized nations in all ages, that these metals, and particularly gold and silver, are the fittest materials of which money can be made. Gold and silver are perfectly homogeneous in themselves, for no physical difference can be found in any pound of pure gold or pure silver, whether the production of Europe, Asia, Africa, or America; they are divisible with the greatest accuracy into exact proportions or parts. From their value, they are not too bulky for the common purposes of exchange, and in all these respects they serve better than any other material as an equivalent. Lastly, they are less consumable and subject to decay, than most other commodities. Certain portions of these metals, with an impression struck on them, by order of the sovereign, as a guarantee of their purity and weight, serve as coin (2). It would be foreign to the object of this work to enter upon the numerous political questions which have been agitated, especially of late years, with regard to bullion and paper currency (3). We shall content

Of coins, money and notes.

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(1) See 55 Geo. 3. c. 43. s. 12.

(2) See more fully Lord Liverpool's tract, and 2 Adolph. 167, 8.

(3) See generally Anderson on Commerce, 446, 459. 3 Do. Index, tit. Money, Bullion, Shillings. 20 Pamphleteer, 531.

ourselves with an outline of the legal provisions affecting the currency and tender of coin, tokens, and notes, including all the points essential to a merely commercial view of our subject.

The coining of money is in all states the act of the sovereign power. In England this right belongs to the king, as the fountain of justice and the arbiter of commerce; he being also entitled, by virtue of his prerogative, to treasure trove, and all mines of gold and silver throughout his dominions (1). In coin there are three things to be considered, viz. the materials, the impression, and the denomination (2). With regard to the materials Sir Edward Coke lays down (3), that the money of England must be composed either of gold or silver. And Mr. Justice Blackstone states, that no other was ever issued by royal authority till 1672, when copper farthings and halfpence were coined by King Charles the Second, and ordered by proclamation to be current in all payments under the value of sixpence, and not otherwise (4). This copper coin is not upon the same footing with the other in many respects, particularly with regard to the offence of counterfeiting it, which though made felony by 11 G. 3. c. 40. is still clergyable (5). It is questionable, however, whether a prosecutor is now at liberty to proceed for the offence as a misdemeanor by 15 G. 2. c. 28., which punished it with two years imprisonment, or whether it is merged in the felony. (6)

As to the impression, the stamping thereof is the unquestionable prerogative of the crown, for though divers bishops and monasteries had formerly the privilege of coining money, yet, as observed by Sir Matthew Hale (7), this was usually done by special grant from the king, or by prescription, which supposes one, and was therefore derived from and not in derogation of the royal prerogative (8). Besides, they had only the profit of

(1) See Bac. Abr., Prerogative, B. 8.

(2) 1 Bla. Comm. 275, 6, 7. Comyns, in his Digest, tit. Money, adds fixed weight, alloy, the king's authority, and proclamation, citing Davies, 196.

(3) 2 Inst. 577.

(4) 1 Bla. Com. 277.

(5) 11 Geo. 3. c. 40. and 37 Geo. 3. c. 126.

(6) See 15 Geo. 2. c. 28. 1 East, P. C. 162. Generally on counterfeiting copper coin, foreign, domestic, and tokens, see 2 Ch. on Cr. Law. 106, &c.; and generally on debasing coin, 2 Adolph. 169.

(7) 1 Pl. Cro. 191.

(8) Com. D., Money, B. 5.

the coinage, and not the power of instituting either the impression or denomination, but had usually the stamp sent them from the exchequer. (1)

The *denomination or value* for which the coin is to pass current is likewise in the breast of the king (2); and if any unusual pieces are coined, that value must be ascertained by proclamation. In order to fix the value, the weight and fineness of the metal are to be taken into consideration together. The business of the mint is conducted by several officers formed into a corporation. Previously to the making of any coin, mint indentures are executed between the king and the corporation, declaring at what rate or value the coins therein ordered to be made shall be current. To ascertain whether this contract has been faithfully performed, the process called *assaying* is applied both to the gold and silver coin; for as each has some portion of alloy, it is necessary to determine whether the quantity allowed has been exceeded, and also to judge of other particulars relating to the weight and fashion of the coins. All gold and silver were anciently coined without alloy (3); but now some alloy is admitted into the standard coin, which is so called when a given weight of gold or silver is of a given fineness. The pound troy of gold, consisting of 22 carats (or twenty-fourth parts) fine and two of alloy, is divided into 44 guineas and an half of the present value of 21s. each; and the pound troy of silver, consisting of 11 ounces and two pennyweights pure, and 18 dwts. alloy, is divided into 66 shillings, whether coined in crowns, half crowns, shillings, sixpences, or smaller coins (4). It is then called esterling or sterling metal, a name for which there are various reasons given, but none of them entirely satisfactory. The most probable opinion seems to be, that it was derived from the Esterlinge or Easterlings, as those Saxons were anciently called who inhabited that district of Germany now occupied by the Hanse Towns and their appendages, the earliest traders in modern Europe. And of this sterling metal all the coin of the realm must be made by statute 25 Ed. 3. c. 13. (5); so that the

(1) 1 Bla. Com. 277, 8.
(2) Davies, 204. Com. Dig., Money, B. 4, 5, &c.
(3) Com. D. tit. Money, B. 2.
(4) 56 Geo. 3. c. 68. s. 3. Folkes on Coins, 19. 1 Bla. Com. 277, notes.
(5) 25 Ed. 3. c. 13. As to etymology of term sterling, see 1 B. C. 278, notes. Hardres, 57. Com. Dig., Money, B. 2. 2 Adolph. Pol. St. 179.

king's prerogative seems not to extend to the changing, debasing, or enhancing the value of the coin below or above the sterling value (1); though Sir Matthew Hale appears to be of another opinion (2). The king may also by his proclamation legitimate foreign coin, and make it current here, declaring at what value it shall be taken in payments (3). But this it would seem ought to be by comparison with the standard of our own coin, otherwise the consent of parliament will be necessary (4). The king may also at any time decry or cry down any coin of the kingdom, and make it no longer current (5), by which it becomes only bullion, and cannot be tendered after as money. (6)

Tokens. Besides the legal coins of the realm, there have been in circulation in this country in former times, *tokens* or pieces of metal, passing among private persons by consent at a certain value (7). They were made current in England, Ireland, and Wales. The deficiency in quantity of copper coin, and mistrust arising from the quantities of counterfeits, appear to have occasioned the first modern appearance of tokens as issued by private persons for the use of themselves and the neighbourhood. Their first creation was by the Anglesea Copper Company in 1787 (8). Their example was followed by others, till the confusion and degeneracy in size and value of other issues occasioned their being decried (9); and a very late act has provided against the issue of any more copper tokens, by penalties against the making or issuing them of from £5 to £1, and against the circulating them from 10s. to 2s., to be recovered before any justices, with a saving for the Birmingham and Sheffield penny tokens till the times appointed for their being called in (10). And another act of parliament was passed in the same reign, to prevent the further circulation of dollars and tokens issued by the bank of England for the convenience of the public, which, although they were impressed with the image of the sovereign, and protected by certain statutory regulations, were not coin,

(1) 2 Inst. 577.

(2) 1 Pl. Cro. 194. et vid. Com. Dig., Money, B. 7. Bac. Ab., Prerog. B. 8.

(3) Id. 197. 5 Co. 114. b. Com. Dig., Money, B. 6.; and see Id. Prerogative, D. 39.

(4) Sed qr. per Holt, 2 Salk. 446. 1 Hale, P. C. 196.

(5) 1 Hale, P. C. 197.

(6) Dav. 206. Com. D., Money, B. 8.

(7) See 2 Adolph. P. S. 175, &c.

(8) 2 Adolph. 176, 7.

(9) Id. ibid.

(10) 57 Geo. 3. c. 46.

having never been recognized by royal authority (1). The want of currency, however, about this time was so pressing, that the period for the circulation of the bank dollars and tokens was by another act extended to the 5th July 1818, and the tender of them for taxes, stamps, postage, rent, to bankers or carriers for transmission to the bank, legalized till the 5th April 1819 (2).

It follows as a consequence of the doctrines already advanced, with regard to the legitimation of coin, that a creditor is not in general bound to accept money tendered to him, unless the tender be made in legal coin. And it was enacted by the stat. 14 Geo. 3. c. 42. that no tender in the *silver* coin of the realm of a sum exceeding £25 should be a legal tender within Great Britain or Ireland, for more than its legal value by weight after the rate of 5s. 2d. for each ounce of silver; and no person to whom such tender should be made, should be bound by it, or obliged to receive the money so offered in payment. But a late act, 56 Geo. 3. c. 68. (3), after reciting that at various times theretofore the coins of this realm of gold and silver had been equally a legal tender for payments to any amount, and great inconvenience had arisen from both those precious metals being concurrently the standard measure of value, and equivalent for property, and that it was expedient that the gold coin, made according to the indentures of the mint, should from thenceforth be the sole standard measure of value, and legal tender for payment, without any limitation of amount, and that the silver coin should, for the facility of exchange and commerce, be a legal tender to a limited amount only; provided, that after the passing of the act, the gold coin of the realm should be the only legal tender throughout the U. K. for all payments, except as therein-after provided, and that the said gold coin should hold such weight and fineness as were prescribed by the present indenture with the master and worker of the mint for making gold monies at his majesty's mint in London, and with such allowance called the remedy, as was given to the master by that indenture, which weight and fineness were declared by the act to be the standard for the lawful gold coin of the realm, so far as related to gold coins of the denominations then in use, and specified in the indenture; and that in case any gold coin of any

(1) 57 Geo. 3. c. 113.
(2) 58 Geo. 3. c. 13.
(3) Continued during Bank Restriction Act, 54 G. 3. c. 52.

other denomination should thereafter be coined at the mint under any future indenture, such gold coin should hold the like standard in fineness as the gold coins of the present denominations, and should hold a weight proportionate to that of the present gold coin, according to the value for which such gold coins of any new denomination should be declared to be current. The statute then declared, that after such day as should be named for that purpose in any proclamation issued by his majesty, with the advice of his privy council, the regulation introduced by the 14 Geo. 3. should be repealed, and that after such day, no tender in the silver coin of the realm of more than forty shillings at a time should be held legal, in any part of the U. K., either by the tale or weight of the coin, or otherwise howsoever.

A tender of *bank of England notes* is not a tender in coin, and cannot be pleaded as a legal tender in bar to an *action* (1). But if bank notes are offered, and the creditor does not object to them on that account, the tender is good (2). And after an offer to pay the debt in bank notes, the creditor is deprived of his remedy by arrest, and can only proceed by serviceable process, the affidavit to hold to bail being required by the bank acts to state, that offer has been made to pay the sum sworn to in notes of the governor and company of the bank of England, expressed to be payable on demand, fractional parts of the sum of twenty shillings only excepted (3). So on a proceeding by distress or poinding, if the sum due and costs be tendered in bank notes, the tenant is entitled to a return of the goods; and if a larger sum be insisted upon, and afterwards it appear that no more was due, he will be entitled to all costs subsequent to the tender; but any remedy the land owner may have, exclusively of a distress or an action of ejectment, is not barred by such tender (4). And under an execution or a distress, or any other process for raising or levying money, the officers of justice may receive the amount in bank notes; so these notes may be paid into court; but they must be verified, if required, by the oaths of the parties paying them (5). Bank notes may also be accepted by the collectors, receivers,

(1) Gingby v. Oakes and another, 2 Bos. & Pul. 526.

(2) Wright v. Reed, 3 T. R. 554. Brown v. Saul, 4 Esp. 267. Lockyer v. Jones, Peake Rep. 180.

(3) 37 Geo. 3. c. 45. s. 9. 37 Geo. 3. c. 91. s. 8. 38 Geo. 3. c. 1. s. 8. 43 Geo. 3. c. 18.

(4) 52 Geo. 3. c. 50. s. 6. 53 Geo. 3. c. 5. 54 Geo. 3. c. 52.

(5) 52 Geo. 3. c. 50. s. 7, 8, 9.

and other officers of the public revenue authorized to receive the same, if offered to be so paid, where there are no fractional parts of the sum of twenty shillings (1); and these notes, being commonly treated as money, are held to be included in that term within the meaning of the annuity act (2). A tender of a bank note for a large sum, from which the creditor can only pay himself by giving change, is not a good tender of the smaller sum (3). But a tender of a large sum in monies numbered, from which the creditor has only to select a portion, as of twenty guineas in payment of the sum of ten guineas, is valid, if the account on which the tender is made be specified (4). We have already seen that if the king by proclamation decries any coin, it cannot afterwards be tendered as money, but is only bullion (5); and that it seems the established opinion, contrary to that of Sir Edward Coke (6), that the king may make base or mixed money current as sterling (7). Therefore, if an obligation be t opay so much in current money at such a day, and before the day the money be enhanced by proclamation, payment or tender of the sum in the enhanced money is sufficient (8); and the rule applies, though the obligation was made in England, for payment in Ireland, and the money is enhanced there only, for the time and place of payment are principally to be regarded (9). So if the money was tendered after the day of payment, and before the enhancement, for there was a default by not tendering it at the day (10). But if money be tendered at the day in pure coin, and afterwards the money is debased, he shall have the value of the coin current at the time of the tender (11); or if a man be bound to restitution of pure coin received by him, and payable on request (12). So when a bill is drawn here, and payable in a foreign country in foreign coin, the value of which is reduced by the government of that country, it is said that the bill shall be payable according to the value of the money at the time it

(1) 56 Geo. 3. c. 68. s. 18.
(2) Wright v. Reed, 3 T. R. 554. 17 Geo. 3. c. 26., and see 53 Geo. 3. c. 141. s. 2.
(3) Betterbee v. Davis, 3 Campb. 70. Robinson v. Cook, 6 Taunt. 336, 7.
(4) Wade's Case, 5 Co. 115 a. Stra. 916. Latch. 70.
(5) Davies, 206.
(6) 2 Inst. 577, 8.
(7) 1 Hale, P.C. 194. Davys, 48. and 21, 2 2 (b), 25, 48. Com. Dig. Money, (B.) 4, 6, 7 and 8. 1 Bla. Com. 278. note.
(8) Com. D. Money, B. 8. cites Dav. 26. (b).
(9) Id. ibid. Dav. 25. (b) 27, 8.
(10) Id. ibid. comm. semb. Dyer, 83 (a) and 82.
(11) Id. ibid. comm. sembl. Dav. 27. Dyer, 82 (b).
(12) Id. ibid. Dub. Dav. 27. b. sed vid. Dy. 83 a. per 2 I. in marg. acc.

was drawn (1); so a legacy must be paid in the currency of the country in which the testator was resident when he made his will (2); thus, where a party, living in Ireland or the West Indies, gave legacies by his will generally, they are payable according to the currency of those respective countries (3)—*a fortiori*, therefore, where the legacy was specifically left in sicca rupees, the decision of the court was, that though the legacy were paid by remittance to this country, the payment must be according to the current value of the rupee in India, without regard to the exchange or expence of remittance (4), and with interest from the time when the legatee's right accrued. (5)

It is not within the scope of the present discussion to enter into those provisions of our *criminal* code which relate to forgery and other offences affecting the circulation of bank notes and coin: these considerations belong more peculiarly to treatises on the criminal law (6). The forgery of bank notes is a capital offence, and several laws of great severity have been made for their protection. With regard to the liability of a person into whose possession a forged bank note may come, it was decided in a late case, that where A. took a bank note in the course of business, which he paid to B., and the note was afterwards stopped at the bank as forged, and is brought by an inspector to A., who immediately paid to B. the amount of the note, and refused to give it up to the inspector, insisting on his right to retain it, in order to recover the amount from the person from whom he received it; the inspector was not justified, in the absence of all suspicious circumstances, in charging A. before a magistrate with feloniously having the note in his possession knowing it to be forged, for the purpose of compelling him to give up the note; for that the possession of the note by A. was legal (7). By possession, under the stat. 45 G. 3. c. 89. is meant the original possession of a note acquired in an illegal mode, and not a subsequent possession where the acquisition of it was legal. (8)

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(1) Dacosta v. Cole, Skinn. 272. Chitty on Bills, 367, 5th ed.

(2) Toller on Executors, 3d ed. 322.

(3) Wallis v. Brightwell, 2 P. Wms. 88, 9. note 1. Saunders v. Drake, 2 Atk. 465. 1 P. Wms. 696. note 2. 2 Bro. Ch. Rep. 38. 3 Id. 50.

(4) Cockerell v. Barber, 16 Ves. j. 461.

(5) Semb. admitted. Id. 464 and 465.

(6) Hawkins, P.C. Hale, P.C. East, P.C. and 2 Chitty, Cr. Law, 103, &c. 1025. of treasons and other offences relating to the coin.

(7) Brooks v. Warwick, 2 Stark. 389.

(8) Id. ibid.

## CHAP. XII.

*Of the Restraint, Encouragement, and Protection of Trade, whether by the King's Charter, by the Common Law, or by Acts of Parliament.—And herein of Monopolies and exclusive Charters.—Of Patents.—Of Corporations and Bye-Laws incident thereto.—Of Contracts in Restraint of Trade.—Of Statutes of Apprenticeship.—Of Literary Property.—Of Bubbles, Forestalling, Regrating, and Engrossing, Conspiracies, Cheats, and False Pretences, Nuisances.—Other Encouragements, &c. by Exemption of Goods from Distresses, &c.*

THE domestic trade of this country is also subject to numerous laws which, with a view to its ultimate advancement, either impose RESTRICTIONS upon rights which would be otherwise unlimited and unqualified, or PROTECT the interests of persons engaged in it from injuries by which they are peculiarly liable to be assailed, or afford them some direct ENCOURAGEMENT. The RESTRAINTS imposed on trade depend either, *first*, upon the king's charter, in considering which we shall have occasion to inquire, 1. into the general power of the king to prohibit or restrain trade, 2. the law of patents; and 3. the establishment of corporations; *secondly*, the restraints by bye-law or custom; *thirdly*, the restraints imposed by contract; *fourthly*, those introduced by act of parliament, and herein of literary property. The PROTECTION of trade from injuries has been chiefly attended to in the laws against bubbles, forestalling, regrating, and engrossing; conspiracies to raise the prices of provisions, or the rates of wages; cheats and false pretences; nuisances by setting up offensive trades. The ENCOURAGEMENT held out to trade is further observable in the privilege which tenants have of removing articles annexed to the freehold for purposes of trade, in the protection of implements of trade from distresses, &c.

I. Of the Restraints on trade. First, By the king's prerogative.

The extent of the KING'S POWER over trade, although it has in former times occasioned much controversy, is now established. At common law, his majesty cannot grant a charter which operates as a total restraint of trade (1), nor an allowance to any particular person or persons, whether by grant, commission, or otherwise, for the sole buying or selling, making, working, or using of any thing which would operate as a restraint upon the freedom of trade, and a derogation from the rights of the public (2). Thus a grant from the crown in the reign of Queen Elizabeth, reciting the inconveniences which arose from the frequent making and use of playing cards, and confining the manufacture, importation, and sale thereof to a particular person, and his deputies and assigns, was holden void, as being an unlawful restraint of a mechanical trade, and in effect amounting to a monopoly (3). So a grant for suppressing the making of such articles, though they serve only for pleasure, and are productive of public inconvenience, is bad, for the making of them is a lawful occupation (4). So the king cannot grant that a corporation shall use a trade at a particular place exclusively of all others not free of the same corporation, although a custom to that effect would be good (5); or that only one hundred persons shall trade to a certain place (6); or that the master, wardens, and fraternity of Trinity Isle in Ireland, shall have the sole buying and selling of merchandize imported into Dublin (7); or that none shall practise physic without a licence from the college of physicians (8); or that the grantee alone shall have the making of ordnance for battery in time of war (9), or the exportation of kerseys out of the country (10). Nor can the king grant that goods shall be landed at a particular port; as for instance, all sweet wines at Southampton, and not else-

(1) Com. Dig. Trade, D. 1. D. 4. and title Prerogative, D. 36. 3 Mod. Rep. 126—131.

(2) 3 Inst. 181. and see Com. Dig. tit. Trade, D. 1. and D. 4. and instances there cited. 2 Rol. Abr. 174. l. 45. & 50. Stat. 38 Edw. 3. See as to patents for new inventions, 21 Jac. 1. c. 16. and infra.

(3) The case of monopolies, 11 Coke, 84.; and see Blanchard v. Hill, 2 Atk. Rep. 484.

(4) Com. Dig. Prerog. D. 36. 11 Co. 87 b.

(5) Com. Dig. Trade, D. 1.

(6) Com. Dig. Trade, D. 1. 1 Rol. Rep. 4.

(7) Com. Dig. Trade, D. 1. 2 Rol. Rep. 113.

(8) Com. Dig. Trade, Physicians, A. D. 1. 1 Rol. Rep. 5. unless confirmed by Parliament, ibid.

(9) Godb. 254.

(10) Ibid.

where (1); nor to an abbot, that he alone shall have such a port (2); nor that all merchandize imported into a city shall be left at the guildhall there for forty days (3). So for other and constitutional reasons, the king cannot grant a new office with fees annexed to it,—as an office for measuring cloths and canvass, or worsteds (4). Nor can he grant a charter by which a forfeiture of goods would be incurred,—as for instance, a power to the dyers to search cloths, and to seize such as are not dyed with logwood (5). So with regard to the trade of the subjects of this country to foreign parts, although it has been laid down that where a place for trade is discovered at the great peril and expence of certain persons, the king may grant them the sole trade to that place, especially, as the books say, if the country was inhabited by infidels,—as the trade to the East Indies to the East India Company (6); yet the better opinion seems to be, that such an exclusive privilege can only be conferred by the authority of parliament (7), and that the only power which the king possesses over a subject in this respect, is to prohibit him from leaving the country by proclamation, or writ of *ne exeat regno*, or to com-

(1) 2 Rol. Rep. 114. Com. Dig. Trade, D. 1.

(2) 1 Rol. Rep. 4.

(3) 2 Rol. Rep. 113. Com. Dig. Trade, 1.

(4) 2 Inst. 533, 534; and see Com. Dig. tit. Officer.

(5) 8 Coke, 125.

(6) Com. Dig. tit. Trade, D. 1.; and the numerous authorities on both sides there cited. 3 Mod. 127.

(7) Id. ibid. Skinner's and Sands's case, and see 2 Anders. Hist. Comm. Ann. 1660. 1684, and 1698. 2 Vol. 460. 566—634. See also Hawk. b. 1. c. 79. 3 Mod. 126. Skinner, 165. Vernon, 127. 1 Mod. 18. 1 Ventr. 47. And as to the disadvantages of exclusive corporations, see ante 1 Vol. 632. In Tucker on Trade, p. 28. he says, that in his time the French sustained disadvantage by their monopolies and exclusive charters. "They have an East India Company at Port l'Orient: Marseilles is a free port for the Levant and Barbary trade; whereas there is a duty of 20 per cent. upon all merchandize of those countries if imported into any other port of France in the Mediterranean. And even at Marseilles there is a particular exclusive company for importing corn and wool from Africa. Lyons is free for all silk entering or going out; whereas there is a heavy duty in the neighbouring towns, by which means Lyons may be said to have an exclusive charter. And there is good reason to conclude there is something of the same nature for the Turkish cloth at Carcassonere, the silk and worsted stockings at Nismes, the clothing for the soldiery at Lodene, the superfine cloth at Abbeville, the stuffs at Amiens, the camblets at Arras, the painted linens and cotton at Rouen, &c." And see an account of the various exclusive charters, with comments thereon. Anderson's History of Commerce, Index, tit. Monopoly.

pel his return by a command under the great or privy seal (1). And if it should be admitted, says Ch. B. Comyns, that the king can grant an exclusive trade, yet he cannot, as a means of protecting it, impose a forfeiture of a ship and goods, for trading without the licence of a company (2); and though he may lay an embargo in case of urgent necessity, as for instance, in time of war,—yet the law does not authorize such a measure for the benefit of a private trader or company. (3)

Of monopolies in general

A monopoly, or a grant tending to a monopoly, is said by Lord Coke to have three inseparable consequences, namely, the increase of the price of the commodity, the deterioration of its quality, and the impoverishment of traders in general (4). All grants of this nature are contrary to Magna Charta (5), and a statute 38 Edw. 3. declares, that merchants may freely deal in all manner of merchandize, notwithstanding any charter (6). The post office establishment for the conveyance of letters has been observed to be the only one that remains of the numerous monopolies formerly in the power of the crown, and this institution, besides being of the most essential utility to the nation, has been confirmed in its exclusive rights by many acts of parliament, which have also regulated its proceedings and rates (7). The various trading corporations, and the two incorporated insurance companies, are other instances of monopolies which rest upon the authority of acts of parliament. The statute 21 Jac. 1. declares, that all monopolies and charters and letters patent for the sole buying, selling, making, working, or using of any thing, &c. are contrary to law, and shall in nowise be put in execution. It directs that the validity of all such grants shall be tried by the common law (8), and awards treble damages

(1) Chitty jun. on Prerog., 3 Inst. 179, 180. In Com. Dig. Prerog. D. 34, 35. after stating this doctrine, it is added, "but *merchants* may *abide* beyond sea, though it be not to merchandise;" but this it seems must be understood as subject to the power of the crown to compel their return. As to the legislative provisions against artificers leaving the kingdom, or the exportation of tools, ante 1 Vol. 578—580. 5 Geo. 1. c. 27. 21 Geo. 3. c. 37.

(2) Skin. 135. Com. Dig. Prerogative, D. 38.

(3) 3 Lev. 353. 1 Salk. 32. Com. Dig. Prerog. Bac. Abr. Prerog.

(4) 11 Co. 86 b.

(5) 2 Inst. 63.

(6) 2 Rol. Abr. 174. pl. 38.

(7) 2 Adolph. Brit. Emp. 31.

(8) 21 Jac. 1. c. 3. s. 2.; and see Cowp. 173. 4 Inst. 86.

and double costs to the party grieved (1). The act does not extend to charters granted to corporations or to the liberties of the Newcastle Coal Company, and some other special privileges (2). It was declared also, that the act should not extend to letters patent and grants of privilege for the term of *twenty-one years* or under, *theretofore* made, of the sole working or making of any *new* manufacture within the realm to the first and true inventor, which others at the time of the making of such letters patent and grants did not use, so that they were not contrary to law, nor mischievous to the state by raising the prices of commodities at home, or hurtful to trade, or generally inconvenient, but that they should be of the same force and effect as if the act had not been made; and if such letters patent and grant were made for a longer term than twenty-one years, that then they should be in force for that space of time only, to be accounted from their respective dates (3). The act declares also, that its provisions shall not extend to any letters patent and grants of privilege for *fourteen years* or under, *thereafter* to be made, for the sole working or making of any new manufactures within the realm, to the true and first inventors of such manufactures, which others at the time of making such letters patent and grants shall not use, so as they be not contrary to law nor mischievous to the state, by raising the prices of commodities at home, or hurtful to trade, or generally inconvenient; the said fourteen years to be accounted from the date of the letters patent or grant, which were to be of such force only as they would be of if that act had not been made. (4)

It seems clear that, at common law, the king may, for a reasonable time, make a good grant to any one, of the sole use of an art invented or first brought into the realm by the grantee (5). This principle is founded on the justice and public expediency of allowing the benefit of any new discovery to the person by whom it was made. For if the public were allowed to take the benefit of an invention as soon as it was communicated, before the inventor had enjoyed the profits for a sufficient time to remunerate himself for his labours and expence, few people would be

Of patents.

(1) 21 Jac. 1. c. 3. s. 4.; and see 2 Atk. 485. Disputed charter not established in equity without trial at law and post, as to patents.

(2) 21 Jac. 1. c. 3. s. 9. 12. 13, &c.

(3) 21 Jac. 1. c. 3. s. 5.

(4) 21 Jac. 1. c. 3. s. 6.

(5) Noy, 182, 3.

disposed to embark their capital, or to exercise their ingenuity, in making new and beneficial experiments. On this ground, therefore, the statute preserves the right of the crown to grant letters patent for the term of 14 years, of new manufactures. *In arranging* this subject, we shall consider, 1st. For what invention a patent may be granted, as for a new manufacture. 2dly. Who is to be considered the inventor. 3dly. The form of the patent and specification, and the description of the invention. 4thly. The mode in which a patent is obtained. 5thly. The remedies for an infringement of the patent right. And, 6thly. The mode in which the patent may be vacated or annulled.

For what inventions a patent may be granted.

Manufactures are things made by the hands of man (1), and are reducible to two classes, namely, machinery and substances. In the former class the *machine*, in the latter, the *substance* produced, forms the manufacture, and is consequently the subject of a patent (2). It is a word of extensive signification; it applies not only to things made, but to the practice of making, to principles producing new results. Under things made we may class new compositions of things, such as new manufactures, in the most ordinary sense of the word, or new pieces of mechanism whether calculated to produce old or new effects (3). Under the practice of making, we may class all new artificial manners of operating with the hand, or with instruments in common use, new processes in any art producing effects useful to the public (4); so, new methods of manufacturing articles in common use, where the whole merit and effect produced are the saving of time and expence, and thereby lowering the price of the article, may be called new manufactures, and within the spirit of the act (5). Although the materials are old, if the combination, arrangement, or compound be new, or produce a new effect, a patent may be obtained for the invention; but the patent must be for the compound article, and not for the materials or ingredients of which it is made (6). For in inventions, through the medium of me-

(1) Per Ld. Kenyon, Hornblower and another v. Boulton and another. 8 T. R. 95., and Boulton v. Bull. 2 H. Bla. Eyre, C. J. Davies, 416, 17.

(2) Per Heath J. in Boulton and another v. Bull, 2 Hen. Bla. Rep. 463.

(3) 2 H. Bla. 491, 2.

(4) Id. ibid. p. 207.

(5) Id. p. 210.

(6) Per Buller, J. Boulton and another v. Bull, 2 H. Bla. 463, 487., and Davies, 418. Lord Ellenb. in Huddont v. Grimshaw, reported Davies, 267, 278. Per

chanism, there are some materials which are common, and cannot be supposed to be appropriated in the terms of any patent; these are common elementary materials to work with in machinery, but it is the adoption of those materials to the execution of any particular purpose that constitutes the invention; and if the application of them be new — if the combination in its nature be essentially new — if it be productive of a new end, and beneficial to the public, it is that species of invention which, protected by the king's patent, ought to continue to the person the sole right of vending it (1). If he states any particular thing before in common use, applied in a new manner to the production of and effecting a new end, that is part of the substance of the invention (2). If the novelty of the invention consists in the new conformation of its parts, and the new conformation of all those parts is of the patentee's invention, then although every one of the parts was old, he would be entitled to a patent for a machine composed by that new conformation of the whole; but if another person had combined all those parts up to a given point, and the patentee took up his combination at that point, and went on combining beyond that, if the subsequent combinations alone were his invention, he will have no right to the former combinations (3). A material and useful improvement of, or addition to, an old article, is considered as a new manufacture, and consequently the subject of a patent (4); and a patent for an improvement of a thing, has been said to be substantially the same as a patent for the thing improved (5). But if the invention be only an improvement of the old engine, or of any one or two engines, which previously existed, a patent for the whole machine will be bad. If, on the other hand, the patentee invents an engine, which consists of a perfectly new conformation of parts, although all the parts were used before, he will be entitled to support his patent for a new machine (6). The public has a right to purchase an addition or improvement invented, without being encumbered with other things. Therefore, where there was an invention of a particular movement in a watch, and a patent

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Lord Mansfield in Morris v. Braunston, Bull. N. P. 77.

(1) Per Lord Ellenborough in Huddart v. Grimshaw, reported Davies, 278.

(2) Id. ibid. p. 279.

(3) Per Gibbs, C. J. Bovill v. Moore, Davies, 412, 3.

(4) Per Lord Mansfield, in Morris v. Branson, 1776. Bull. N. P. 7th ed. 76. c. 8 T. R. 104.; but see 3 Inst. 184.

(5) Per Heath, J. in Boulton and another v. Bull, 2 H. Bla. 482. sed quære.

(6) See Bovill v. Moore, reported Davies, 412, 3. Hill v. Thompson and others, Holt's C. N. P. 636.

was taken out for the whole watch, it was held void (1).* If a patent be taken to do that by a tube which was before done by a ring or circle, the patent would be good, for this is a substantive invention (2). But the novelty and utility of the invention are essential to the validity of a patent (3); and a patent can only be obtained for something vendible (4). A philosophical principle only, neither organized nor capable of being so, is no ground for a patent, because it is an element and rudiment of science, and which, till applied to some new production from these elements, by a reduction into a practical improvement, or making of a machine (5), could not, with justice to other inventors, be appropriated to the exclusive use of any one of them (6); and, if such a principle alone be the foundation of a patent, though the invention may be a great improvement, it will be void *ab initio* (7). Therefore, the discoverer of the expansive force of steam was only entitled to a patent for the machine by which he employed the force (8). A specification denoting intention only, without stating the application to any thing, will not support a patent; the grantee cannot anticipate the protection, before he is entitled to it by practical accomplishment (9). The organization of a machine may be the subject of a patent, but principles cannot; a patent for the application of a principle must be as bad as a patent for the principle itself. It seems impossible to specify a principle and its application to all cases, which furnishes an additional argument that it cannot be the subject of a patent (10.) But for a principle so far embodied, and connected with corporal substances, as to be in a condition to act and to produce effects, there may be a patent (11). But, if a patentee sets forth his invention intelligibly, his specification should be supported, though he erroneously professes to set forth a new principle. The accuracy of description required in the patent and specification will be mentioned hereafter. With regard, however, to the different inventions for which letters patent may be granted, we

(1) 2 H. Bla. 489, 490.; and see Rex v. Wheeler, 2 B. & A. 350.; post. 199.
(2) Id. 297, 8.
(3) Per Gibbs, C. J. Bovill v. Moore, Davies, 399.
(4) Per Heath, J. 2 H. Bla. 482.
(5) See Per Eyre, C. J. 2 H. Bla. 492.
(6) Per Buller, J. 2 H. Bla. 485. Per Grose, J. 8 T. R. 101.; and see 2 H. Bla. 463, 482, 3, 5, and 3d ed. 800, 500, note (a); and see 2 Bar. & Ald. 345.
(7) Per Buller, J. 2 H. Bla. 485, 6.
(8) Per Heath, J. id. 482.
(9) Per Rooke, J. Boulton v. Bull, 2 H. Bla. 481.
(10) Per Heath, J. id. ibid.; sed vid. 1 Stark 354.
(11) Per Eyre, C. J. id. 492, 3, 4.

may observe, that a patent for a new mode of operating by machinery, &c. producing a new effect, is a totally distinct thing from a patent for the component parts of the machine. Thus, in the instance of the patent for a new invention for securing buildings from fire by a new method of disposing iron plates in buildings, the patent could not have been granted for making the plates of iron, which, when disposed in a particular manner, produced the effect, for the plates were in use before, nor could it in the nature of things be granted for the effect produced; it was, therefore, properly granted for the method of securing buildings from fire (1). If, on the other hand, an instrument, as for instance, an object glass, be produced by the aid of philosophical experiments, with new powers, the patent should be for the glass produced, and not for a method of making object glasses. So a patent for a new method of preparing powders, when the powders themselves consist of a new combination of old materials from the invention, would be objectionable (2). A patent cannot be obtained for a new use resulting from old machinery, for that which can only be termed a new effect, because it is either no substance at all, or what is exactly the same thing as the question on a patent, no new substance, but an old one produced advantageously for the public (3). In a late case upon this subject, it was observed, that the word "manufactures" as used in the statute, has been generally understood to denote, either a thing made which is useful for its own sake, and vendible as such, as a medicine, a stove, a telescope, &c. or to mean an engine or instrument, or some part of an engine or instrument, to be employed either in the making of some previously known article, or in some other useful purpose, as a stocking frame, or a steam engine, for raising water from mines; or it may perhaps extend also to a new process, to be carried on by known implements or elements, acting upon known substances, and ultimately producing some other known substance; but producing it in a cheaper or more expeditious manner, or of a better and more useful kind. But no merely philosophical, or abstract principle, can answer to the word "manufactures;" something of a corporeal and substantial nature, something that can be made by man, from the matters subjected to his art and skill, or at the least some new mode of employing practically his art and skill, is requisite to satisfy this word (4). The party

(1) By Eyre, C. J. 2 H. Bla. 493.; and see 2 B. & A. 350.; post. 199.

(2) 2 H. Bla. 493.

(3) 2 H. Bla. 494, 486, 7.

(4) Rex. v. Wheeler, 2 Barn. & Ald. 349, 350.

who takes out the patent should shew that the invention is new; that it is not only new, but useful; and that he has accurately explained the nature of his invention in his specification: separating that which is new from the old, so as to enable a person of tolerable skill to make the thing from his specification. (1)

It is of no consequence that two patents profess the same object. If springs are not an essential part of the invention, and they are specified as an essential part, it would certainly affect the patent; if the spring should be a material part of the invention, and relied upon as such in two patents, and if it is the same, the latter patentee cannot take the benefit of it (2). The court refused to seal a patent for representing Italian operas, because the legal provisions for carrying them on were by agreement with the lord chamberlain, his executors and administrators, and the right to the patent was not sufficiently connected with the property in the house (3).

Secondly, To whom patents may be granted.

Having shewn for what inventions patents are valid, we will now see to whom they may be granted, that is, who are to be considered as the *true and first inventors.* The person who introduces a discovery to the public is entitled to a patent for it, whether he happens to be the original inventor or not; for where one person had discovered a new method of making refracting telescopes, but never having made it public, another had obtained a patent for it, the patent was for that reason confirmed (4).; so any person in this country, in possession of a foreign discovery, may have a patent on publishing it, for the act intended to encourage new devices useful to the kingdom; and whether learned by travel or study, it is the same thing: indeed the express words of the statute speak of manufactures new within the realm. (5)

If an inventor has *published* his invention before taking out his patent, so that the public are in possession of the discovery, he cannot support his patent, though he is the first inventor thereof, for the statute requires, not only that they should be

(1) Per Gibbs, C. J. in Manton v. Manton, Davies 348, 349.

(2) Per Lord Ellenborough, C. J. in Huddart v. Grimshaw, Davies, 294, 5, 6.

(3) Ex-parte Reilly, 1 Ves. J. 112.

(4) Dollond's case, 2 H. Bla. 487.

(5) Edgeberry v. Stephens, 2 Salk, 447. &c. Enrolment Office Books passim. Davies, 428.

*new manufactures*; but such as others, at the time of making the patents, shall not use (1). Thus a sale of the discovery by the patentee for four months, before the patent passed the great seal, avoided it (2). So the patentee must be the sole inventor (3); for a patent is in the nature of an agreement between the king and a subject; that in consideration that the latter will put the public in possession of a new beneficial invention, he shall have the exclusive possession for 14 years: therefore, as the patentee can make no such valid consideration, where the public already possess the discovery, if any person has used an article, for which a patent is obtained previously to the date of the patent, although he had kept it a secret from all but his two partners and two servants concerned in preparing it, it will be a ground of nonsuit; but it must be known and practised by more than one, as in Dollond's case; where it was held that the person promulgating its practice was entitled to be called the inventor, in preference to the person who kept his discovery confined in his closet (4). Thus it will appear, that the greatest secrecy should be observed with regard to inventions, till the patent has passed the great seal; and Lord Eldon has said, that were he an inventor, he would not disclose a discovery to his own brother till his right was so secured (5). And where a person discovered an improvement on saddles, and communicated it to another, taking a bond, penalty £1000, conditioned not to take any undue advantage of it, but who afterwards gained a patent for it in his own name, which was allowed to remain on certain terms; on the patentee's refusing to comply with these terms, and claiming the originality of the invention, it was held in an action for the penalty, that such sum could not be considered in the nature of liquidated damages (6). If a person, desirous of being acquainted with the particulars of a new invention, promise, on condition of being informed thereof by the inventor, not to avail himself, or take any advantage of such communication, he is liable to be sued on such promise, if he afterwards takes any undue advantage of the communications made to him (7). A person having obtained a patent for

(1) Davies, 428, and Tennant's case, id. 429.

(2) Wood v. Zimmer, Holt. C. N. P 58.

(3) Tennant's case, Davies, 429.

(4) Cited by Buller, J. 2 H. Bla. 487.

(5) Davies, 444, 446.

(6) Smith v. Dickinson, 3 B. and P. 630.

(7) Id. ibid. 2 Comyns on Contracts, 481.

an invention, of which he supposed himself inventor, agreed to let another use it upon payment of a certain annual sum, secured by bond, which was paid for several years, at the end of which time, the latter finding that the former was not the inventor, but that it was in public use before the patent was obtained, brought an action to recover back the amount of the annuity paid; but it was held that he could not recover, as both parties had made the contract in ignorance, and without any fraud, and the person who paid the money had derived a partial benefit from the thing contracted for (1). It would be prudent for the inventor, where the machinery is such that he is unable to construct it himself, to employ different workmen to construct detached parts, of the connection or application of which they should be kept ignorant (2). It appears doubtful whether a court of equity, in the exercise of its jurisdiction to decree the specific performance of an agreement, can interfere by injunction to restrain a party from divulging a secret in medicine, unprotected by a patent. (3)

Thirdly, The form of the patent and specification.

Having now seen for what invention and to whom a patent may be granted, we shall proceed to consider the *form of the letters patent and specification*, with respect to which the principal questions that arise, relate to the *description of the thing invented*. By a proviso in the letters patent, it is required that the patentee "shall particularly describe and ascertain the nature of his said invention, and in what manner the same is to be performed, by an instrument in writing under his hand and seal, and cause the same to be enrolled in the court of chancery, within a specified time (as two calendar months), after the date of the patent" (4). The instrument by which this description is made is called a *specification*; the prohibition commences with the *patent*; the enrolment of the *specification* is a condition subsequent. The language in which the supposed invention is described in a patent of this nature, is the language of the patentee himself. He represents to the crown that he has invented a certain instrument or method, &c., and that he is the first and sole inventor, &c.; and the crown yielding to his representation, and willing to give encouragement to all arts and inventions, that

(1) Taylor v. Hare, 1 New Rep. 260.

(2) Davies, 446.

(3) Williams v. Williams, 3 Merivale, 75, and see Newberry v. James, 2 Merivale, 446.

(4) Davies, 34. 8, T. R. 100. The day of the date of the patent is to be excluded in calculation, Watson v. Pears, 2 Camp. 294.

may be for the public good, grants to the patentee the sole liberty and privilege of using his said invention for a certain term. It is obvious, therefore, that if the patentee has not invented the matter or thing, of which he represents himself to be the inventor, the consideration of the royal grant fails, and the grant consequently becomes void; nor is it less necessary that a correct denomination should be given to the invention in the *letters patent*, than that the details of the process should be correctly stated in the *specification*. The language of the patent may be explained, and reduced to certainty by the specification; but the patent must not represent the party to be the inventor of one thing, and the specification show him to be the inventor of something different; because, if the invention had been truly represented, it might have been known to have been previously in use, or to have been worthless in itself, in either of which cases no patent would have been granted (1). Where a new process is the subject of a patent, as it seems it lawfully may be without any new mechanical substance, the patentee should describe his invention accordingly, and the word method may be used as synonimous with process (2); as in the instance already mentioned of a new method of disposing iron plates in buildings, for securing them from fire (3); and Watt's case, where the patent was for a method of lessening the consumption of steam and fuel in fire engines, appears to have been regarded in the same light; one of the judges expressly says, that whether the invention was considered in the whole or in any of its parts, there was no newly invented machinery, and therefore the patent could not have been for an addition to a fire engine (4). In a late case the court of King's Bench seemed to think that a patent for a new method of drying and preparing malt, for the colouring of beer would be a good patent for the manufacture, that is, for the malt so dried and prepared, if followed by a sufficient specification (5). If on the other hand, the invention consists of a new machine or instrument, the patent should be taken out for that and not for a mode of operating; and therefore, where a patent was taken out for an improved method of lighting cities, towns,

(1) See more fully by Abbott, C. J. in R. v. Wheeler, 2 B. and A. 345.

(2) 2 B. & A. 350.

(3) Ante. 195.

(4) By Eyre, C. J. 2 H. Bla. 497, 8 T. R. 106, &c., but see 2 B. & A. 350. 8 T. R. 105, 7, &c. It rather seems that the invention in this case was a new instrument.

(5) The King v. Wheeler, 2 Barn. & Ald. 352.

and villages, whereas the invention, as appeared from the specification, consisted merely in the improvement of an old lamp, by a new combination of parts known before, the patent was held void for the mis-description (1). And where a patent was taken out for a tapering brush, and it appeared that the new brush only differed from the common one, in the circumstance that the hairs or bristles were cut of unequal lengths, the patent was held not to be sustainable (2). Nor will a patent for a new and improved method of drying and preparing malt, be supported by a specification for giving to it, when previously prepared, some qualities which it did not possess before, or which it possessed only in a very slight degree; namely, the qualities of being soluble in water, and colouring the liquor in which it might be dissolved; an object which the patentee obtained by the application of a very high degree of heat (3). It seemed to be thought, indeed, that a patent for a new method of drying and preparing malt, "for the colouring of beer," might be good as a patent for the manufacture, that is, for the malt so dried and prepared, if followed by a sufficient specification. But one of the objections to the letters patent was, that the *purpose* to which the malt was to be applied, namely, the colouring of beer, was not mentioned in them, and although in general the purpose or object of the invention need not be mentioned in the grant, yet, if in any particular case the mention of the purpose be necessary to explain the words previously used, to show that they were not used in their ordinary and obvious sense, but in a sense limited and confined to the particular purpose, in such a case the purpose ought to be mentioned. In this case, if the patentee had represented himself to be the inventor of a method of preparing malt for the purpose of *colouring* beer and porter, every person who read his representation would understand that the malt prepared according to his method was not intended to answer the common and known purposes of that article, viz., the brewing of beer, but was intended only for the special and particular purpose of *colouring* the liquor to be used in addition to common malt. No person, however, from the description given in the patent, could conjecture that such was the object of the invention. (4)

(1) Lord Cochrane v. Smethurst, 1 Stark, 205.

(2) 2 Stark, 249.

(3) 2 B. & A. 351.

(4) The King v. Wheeler, 2 B. & A. 345.

The *specification* ought to be such as will teach mechanical men of common understanding to make the thing for which the patent is granted, without further instructions or inventions of their own, after the expiration of the patent (1). A specification is bad, if a man of ingenuity is required to supply its defects, if sensible men that have skill in the business and mechanics in general cannot by the specification make the thing invented, it is not so described as to support the patent (2). It is sufficient, however, if it be understood by men who have skill in the subject matter, for it is not supposed to be addressed to ignorant persons (3). But if it appear that a mechanic could not from the specification make an engine with equal effect, or if it require expense and experiments to do it, either of these facts would avoid the patent (4); and where a specification stated the invention to consist in exposing malt, previously made, to a very high degree of heat, but did not describe any new machine invented for that purpose, nor the state, whether dry or moist, in which the malt was originally to be taken for the purpose of being subjected to the process; nor the utmost degree of heat which might be safely used; nor length of time to be employed; nor exact criterion to know when the process was accomplished, the patent was held void:—1st, Because the specification was not sufficiently precise; 2dly, The patent appeared to be for a different thing from that mentioned in the specification; and 3dly, As the word malt was not to be taken in its usual sense, viz. of an article used in the brewing but only in the colouring of beer, the patentee should have stated the *purpose* to which the prepared malt was to be applied, and to have said that it was obtained for a new method of drying and preparing malt, to be used in the colouring of beer (5). The patentee must give the specification of the invention, in the clearest and most unequivocal terms of which the subject is capable (6), and if it appear that there is any unnecessary ambiguity, obscurity, or attempt to

(1) Per Buller, J. in Rex v. Arkwright, Davies, 106. 434; and Bull. N. P. 7th ed. 76. c. Liardet v. Johnson, Bull. N. P. 76. b.

(2) Per Buller, J. Rex v. Arkwright, Buller, N. P. 7th ed. 76. c.

(3) Lord Loughborough, in Arkwright v. Nightingale, Davies, 36, assented to by Abbott, C. J. in Bloxam v. Fourdrinier, Sitt. before Michas. Term, 1819.

(4) 2 H. Bla. 484.

(5) Rex v. Wheeler, 2 Bar. & Ald. 345.

(6) Per Grose, J. Hornblower v. Boulton, 8 T. R. 105, &c.

mislead the public, the patent is void (1); but he need not state incidents of machinery commonly known (2). It must be sufficient to enable a man of science to produce the thing intended, without the necessity of trying experiments (3). Again, not only the thing invented must be described, but the relation of the several parts and union of the whole, where complex mechanism is the object of the patent (4). Thus, as an instance of the first of these rules, where the patent was for making a particular sort of yellow, and the patentee directed any kind of fossil salt to be used, when only one kind would answer the purpose, the patent held was void (5). So it was where the patent was for steel trusses, and the patentee had omitted what was of use in tempering the steel, namely, rubbing it with tallow. (6)

So if an article of no use be *inserted,* to mislead the public, it will vitiate the patent (7). We have seen, that if a patent be taken for more of a machine than is strictly the inventor's own addition, it is bad (8); and that the patent, as a general outline of the specification, should state in substance, what is thereafter set out in circumstance and detail in the specification. (9)

If a thing could only be made with two or three ingredients specified, and the patentee has inserted others which will not answer the purpose, the patent is bad. So if he makes the article with cheaper materials than those he has enumerated, although the latter will answer the purpose equally well, the patent is void; because the public is not put in possession of his invention, nor are enabled to derive the same benefit after his term, which he does himself. Defects in the specification are sufficient to vacate the patent (10). Even if a concealment is

(1) Turner v. Winter, 1 T. R. 602. Holt C. N. P. 58. Bull. N. P. 76, 2 Blac. Com. 407, n. 8.

(2) Per Buller, J. Boulton v. Bull, 2 H. Bla. 463.

(3) Per Ashurst, J. id. ibid. &c.

(4) Per Buller, J. Rex v. Arkwright, Westm. Sittings, 25 June, 1785, Bull. N. P. 77.

(5) Turner v. Winter, 1 T. R. 603.

(6) Liardet v. Johnson, Bull. N. P. 76. cited 1 Term Rep. 606. Wood v. Turner, 1 Holt 58.

(7) Buller, J. in Rex v. Arkwright, supra n. 4.

(8) Hill v. Thompson and others, Holt, C. N. P. 636.; and see 3 Merivale 622 and 632. S. C.

(9) Id. ibid.

(10) Per Buller, J. Turner v. Winter, 1 T. R. 607. Bul. N. P. 76. c. 7 ed.

inadvertent, the patentee must answer it at his peril (1). So where a specification went generally to the invention of mixing silk and cotton thread on the frame in order to make lace, as the patent was not for any particular mode of mixing, but for making lace of silk and cotton thread mixed; and it being proved that silk and cotton thread had been mixed before on the same frame, though in a coarser form, the patent was declared void (2). If the patentee in his specification exceed the limits of his invention, and include as his own what was known before, the patent is void (3). In the specification of a patent for an improved instrument, it is essential to point out what is new and what is old; and it is not sufficient to give a general description of the construction of the instrument, without making such distinction, although a plate is annexed, containing a detached and separate representation of the parts in which the improvement consists (4). But where a person having obtained a patent for a certain manufacturing machine, of which he duly enrolled a specification, afterwards obtained another patent for certain improvements in the said machine, in which the grant of the former patent was recited, it was held that a specification containing a full description of the whole machine so improved, but not distinguishing the new from the old parts, or referring to the former specification, otherwise than as the second patent recited the first, was sufficient (5). Where a patentee in the specification sums up the principle in which his invention consists, if this principle be not new the patent cannot be supported, although it appear that the application of the principle as described in the specification is new. (6)

Where the invention is fully and accurately described in the patent, the *subsequent* discovery of an improvement in the prosecution of a manufacture (as by binding together two of the teeth of the dividers, or making one longer than the rest, in a lace machine) will not vitiate the patent; it will only shew that

(1) Per Gibbs, C. J. Bovill v. Moore, Davies, 414.

(2) Per Buller, J. King v. Else, Bull. N. P. 76. 11 East, 109. note.

(3) Per Lord Ellenborough in Huddart v. Grimshaw, Davies, 279, 294, 5. Macfarlane v. Price, 1 Stark. 199.; and see Bovill v. Moore, Davies, 398, 2 Marsh, 211. Sed vid. Harmar v. Playne, 11 East, 101.

(4) Macfarlane v. Price, 1 Stark. 199.

(5) Harmar v. Playne and another, 11 East 101.

(6) Rex v. Cutler, 1 Stark. Rep. 354.

the patentee has since found out the means of carrying on his own invention to better effect (1). But if at the time he obtained his patent he was aware of them, or of any more beneficial mode which he practised himself, and did not communicate to the public in his specification, that is a fraudulent concealment, and will avoid it (2), and it would seem advisable for a patentee to obtain fresh patents for such *bonâ fide* improvements (3). A mis-statement in the specification of the purpose and object of the invention is fatal; as where it was stated that a particular perforation would secure the passage of air without gunpowder, and the fact appeared to be that gunpowder would pass through. (4)

No particular model or drawing need be set forth (though usually made in the margin of the patent of a complex instrument) (5), provided the patentee so describes the improvement as to enable artists to adopt it when the monopoly expires (6). Should a drawing or model be made, it should be drawn to a scale, if possible (7); the copying and embodying the principles by another man in a different form is equally an infringement of the patent, because the mechanical improvement, and not the form of the machine, is the object of the patent, and would be used though under another shape (8). The advice of scientific men should therefore always be taken by a patentee in drawing up this important instrument, that the whole may be severely scrutinized in regard to its novelty, by which no risk can be incurred, as the patent itself has passed the great seal. (9)

The time specified in the patent for enrolling the specification is usually one calendar month after the date (10), though a longer time is specified, where the circumstances are shown to require it (11). A proviso that a specification shall be enrolled within one calendar month then next after the date,

(1) Davies, 381.
(2) Id. 401. Holt, C. N. P. 58.
(3) Harmar v. Playne, 11 East, 101. 1 Stark. 199. and 3 Merivale, 629, 632.
(4) Per Thomson, C. B. Manton v. Parker, Davies, 332.
(5) Hands, 11.
(6) Per Rooke, J. 2 Hen. Bla. 478, 486. Davies, 369.
(7) Rex v. Arkwright, Bull. N. P. 77. a. Hands, 11.
(8) Per Rooke, J. 2 H. Bla. 479.
(9) Davies, 450, 1.
(10) Hands, 8. Ex-parte Koops, 6 Ves. 599. Watson v. Penn, 2 Campb. 294.
(11) Id. 32. note.

which is the 10th of May, is satisfied by an enrolment on the 10th of June (1). Care should be taken that the specification is acknowledged and lodged in the enrolment office in due time, as only the legislature can give relief afterwards (2). The enrolment is for the benefit of the public; it cannot be dispensed with by the Court of Chancery, on the ground that foreigners may be enabled by it to ascertain the invention, and practise it abroad, or from any other reason. The legislature only can enlarge the time beyond that mentioned in the proviso of the letters patent. (3)

Fourthly, Mode of obtaining patent.

To obtain the patent a *petition* for it must be prepared (4), together with an *affidavit* of the inventor in support of it (5). These are then taken to the office of the Secretary of State for the Home Department, where they are lodged. A few days after the answer to the petition may commonly be had, containing a reference of it to the Attorney or Solicitor General (6), which must be taken to either of their chambers for the report thereon (7), and a few days afterwards it will be delivered out by the clerk. The report is then to be taken to the Secretary of State's office for the King's warrant (8), and the clerk will inform the person leaving it when it may be called for. The warrant is directed to the Attorney or Solicitor General, and is to be taken to their patent office (9) for the bill (10). When the bill is prepared, it is taken to the Secretary of State's office for the King's sign manual to the bill (11). As soon as this is obtained, it is carried to the signet office (12) to be passed there, when the clerk prepares a warrant to the Lord Keeper of the Privy Seal, whereupon the Clerk of the Privy Seal prepares his warrant (13) to the Lord Chancellor (14). This warrant is then to be taken to the Lord Chancellor's patent office (15),

(1) Watson v. Penn, 2 Campb. 294. Hands, 50 note.

(2) 6 Ves. jun. 599. Hands, 48, 9.

(3) Id. ibid.

(4) See form, Hands, 25.

(5) Form, id. 27.

(6) Form, id. 28.

(7) Form, id. ibid.

(8) Form, id. 31.

(9) Old Buildings, Lincoln's Inn. Hands, 13.

(10) Form, id. 33.

(11) Form, id. ibid. See 2 Bla. Comm. 346, 7.

(12) This and the Privy Seal office are held together in the north-east wing of Somerset-house.

(13) Form, Hands, 35.

(14) See 2 Bla. Com. 347. 27 Hen. 8. c. 11. s. 2.

(15) Mr. Seton's 12, George Street, Adelphi.

where the patent itself is prepared, and will be delivered out when sealed. (1)

The specification (2) should then be prepared, acknowledged, and lodged at the enrolment office (3), to have the usual certificate of enrolment indorsed on it (4). This is commonly done in about a week or a fortnight afterwards, and then the patent is, in every respect, complete (5); and which cannot be dispensed with to prevent publicity of specification (6). For Ireland and Scotland there must be distinct patents; but though in practice the same patent, at a few pounds additional expence in fees, is made to extend to the colonies (7), this has been doubted (8), and since the union with Ireland the great seals are distinct for patents. (9)

Before the patent is obtained, a *caveat* may be entered; the nature and effect of which have been much elucidated by a late author (10). It was formerly thought by many inventors, that upon entering a caveat they secured to themselves the right of obtaining a patent nothwithstanding the invention might be brought into use prior to their having done so,—in short, that it was a kind of minor patent, giving them every privilege for one year which the patent itself would do for fourteen, or that it would operate as proof of their being the first and true inventors, and that upon their afterwards obtaining a patent, they would be able to maintain it against any person who, in the meantime, might have made use of the invention; but these suppositions are not altogether correct.

A caveat is merely a desire, that if any person should apply for a patent for any particular invention, notice of such application should be given to the party. It is usually entered at the offices of the Attorney and Solicitor General, and upon an application

(1) See form, Hands, 36.
(2) Form, Hands, 47.
(3) Petty Bag Office, Rolls-yard, Chancery-lane.
(4) Hands, p. 50.
(5) Hands, 14.
(6) Per Eldon, C. Ex-parte Koops, 6 Ves. J. 599.
(7) Hands, 15, 26, 71, 2.
(8) 1 Chalm. Op. 203.
(9) 6 Ves. J. 708, where see some observations on this subject.
(10) Davies, 447. Hands, 17. &c.

to either of them for his report upon a petition to the King, for a patent for any discovery of the same nature as that described in the caveat, notice is given to the person, who has taken this precaution, which gives him an opportunity, if he thinks the inventions interfere with each other, of opposing the application. If it is meant to oppose, the Attorney or Solicitor General, before he makes his report, will give a separate audience to each party, and examine the nature of the two inventions, and according to his opinion of their similarity, will make his report or not. If he is of opinion that there is a material coincidence, he will not report in favour of the application; but if otherwise, he makes his report, and the patent proceeds in its regular course (1). If, however, the party entering the caveat, is not satisfied with the decision of the Attorney or Solicitor General, he has another opportunity of opposing by entering a caveat at the Chancery patent office, when, on the patent's coming to the great seal, the Lord Chancellor will himself give a similar audience, and examine the pretensions of the parties. This practice is not often resorted to, as it is attended with much expence (2), and the Chancellor usually orders all costs to be paid by the party opposing, if he does not succeed, as he is averse to the caveat in so late a stage of the business, after great part of the expence of the patent has been incurred (3); but if the caveat is not unreasonable, costs will not be given (4). The caveat remains upon the books for one year, and may be renewed from year to year, as long as is thought requisite (5). The Lord Chancellor refused to seal a patent for representing Italian operas, because the provisions for carrying it on were by agreement with the Lord Chamberlain, his executors and administrators, and the right to the patent was not sufficiently connected with the property in the house. In this case which was much argued and discussed, his Lordship held that it was not sufficient for the party applying merely to answer objections, but he must lay a proper case; that the court would take care that the King was not deceived nor his object disappointed; and would represent the whole to the King, but not decide on the merits of the various claimants; that the court would not sign a patent, which did not put the parties under some controul, as in this instance to enable the

(1) From Davies, 448; and vid. Hands, 18. &c.

(2) Hands, 18, 19.

(3) Davies, 448, and see the expence, bills of costs, &c., Hands, 50 to 54.

(4) Ex-parte Fox, 1 Ves. and Beam, 87.

(5) Davies, 448.

patentee to exhibit operas under a grant from the Crown, without the precautions which the law usually required with regard to such exhibitions, although no caveat should have been entered. (1)

If it is thought necessary to enter a caveat, it is proper to use general expressions, rather than to express the precise invention, as by that means the inventor would receive notice of any application for a patent, connected with the subject of the invention mentioned in the caveat, which might not be the case if the particular invention or improvement should be exactly identified; another reason for general expressions is, to guard against the opposite party obtaining a knowledge of the invention, as he might be able to affect the validity of the patent, by publishing the invention before the patent is sealed, which would have the effect of throwing the invention open to the public. But it will sometimes happen that two ingenious persons may, without any improper communication, make a discovery of a similar invention, in which case, upon the similarity of the invention appearing to the Attorney or Solicitor General, it is usually recommended that the parties should unite interests, and take out a patent in their joint names; for priority of invention would be of no avail, if the other party should be inclined to publish the invention, so as to affect the patent (2). It has been observed that the practice cannot be too much reprobated which has of late grown into use by some speculative persons, of keeping a list of caveats upon general principles entered in the books, without any idea of obtaining patents themselves, but with the sole view of being acquainted with every improvement which may be going on, and thus gaining an opportunity of compromising with the real inventors, who have sometimes paid large sums to induce them to withdraw their opposition. (3)

Act of Parliament for enlarging the term or the number of proprietors.

Although no grant by letters patent for inventions can be made for a longer term than 14 years, yet the legislature may and frequently does prolong the term by act of Parliament, where it appears that the patentee on account of any special circumstances, will not, within the time for which the patent was granted, be sufficiently rewarded for making the invention public, or where, in consequence of subsequent improvements, he is

(1) Exparte v. O'Reily, 1 Ves. J. 112. ante 196.

(2) Davies, 449.

(3) Davies, 449, 450.

equitably entitled to a prolongation of the term. In these cases, the additional terms granted, depend on the particular circumstances, and vary from 7 to 14 years (1). The prolongation cannot be effected by the court of chancery, but by the legislature only. The mode of obtaining the act of parliament, is similar to that which is adopted with regard to other private acts (2). So, though the patent usually contains a proviso for making it void, on an assignment of it to a greater number than five persons, yet the patentee may be enabled by act parliament, to make a transfer of his interest in the patent, to more than such limited number, on a sufficient reason being given for the application; as if, on account of the magnitude of the concern, it be expedient that more than the limited number of persons should become interested in the patent (3). Such an act of parliament will not have the effect of giving a better title to the patentee, than he had before the passing of the act. (4)

Fifthly, The remedies for infringement of patents.

The patentee's remedies for infringement of his patent, together with the law relating to the assignment of it, and the interpretation of covenants connected therewith, remain to be considered. The effect of the patent is to prohibit all persons but the patentee, and those claiming under him, from making use of the invention. It cannot be used even as a substratum to found greater improvements upon (5). If the idea be substantially copied, such copy is a piracy (6). If the patent be in every point good, and any person infringes upon it, the patentee may either bring an action at law for damages (7), or file a bill in equity for an account of the profits made from the illegal use of the invention, on which he may obtain an injunction to restrain the party from the further use of it (8). Where there has been a length of exclusive enjoyment under a patent, the court will grant an injunction in the first instance, without previously putting the party to establish his right by an action at law, but it is otherwise where the patent is recent (9). In order to obtain an injunction, the party must, at the time of applying, swear to his

(1) Hands, 19. 8 T.R. 95. 2 H. Bla. 499.
(2) 6 Ves. Jun. 599.
(3) Hands, 23, 4.
(4) Hesse v. Stevenson, 3 Bos. & P. 565. 8 T. R. 96, 7.
(5) Ex-parte Fox. 1 Ves. & B. 67.
(6) Davies, 405.
(7) Bull. N. P. 76.
(8) Mitford's Chancery Pleadings, 124.
(9) Hill v. Thompson, 3 Merivale, 622.

belief that he is the original inventor (1). There must be separate bills on every distinct invasion of the patent (2); and if any question arises on the validity of the patent, the novelty of the invention, or sufficiency of the specification, it is uniformly referred to a court of law; and where there has been a verdict for the patentee, subject to the opinion of the court, upon a case in which they were equally divided, the patentee must bring another action, though chancery will impose no terms on him, or dissolve an injunction formerly granted, in the mean time (3); so an injunction was granted after possession under a patent till the right could be tried, though the validity thereof was subject to considerable doubt for not distinguishing, in the specification, the improvements from the original machine (4); but where the patent was recent, an injunction was dissolved, with liberty to plaintiff to bring action at law to establish his right, whilst the defendants were to keep an account of their use of the patent right in the mean time; and when, after verdict for plaintiff, an application was made to revive the injunction, and it was objected that defendant intended to move for a new trial, the matter was ordered to stand over till that result, the defendants still keeping their account (5). On the trial of an action for damages for the infringement of a patent, the patentee must give some evidence, which, though slight, will be sufficient to shew the nature of his invention, and in what it consists, and that it produced the effect proposed by the patent, in the manner specified; for after this proof is given, it becomes incumbent on the other party to falsify the specification (6). The plaintiff cannot change the venue from Middlesex to any other county. The letters patent may be proved by the production of them, or by an exemplification or constat of the roll (7). A patentee must prove the novelty of every part of that to which his patent applies (8). Where the plaintiff, having a patent machine, covenanted with the defendant that he should use one in the manner described in the specification, in consideration of which the defendant covenanted not to use any other, it was held in an action

(1) Id. ibid.

(2) See Dilly v Doig, 2 Ves. J. 486.

(3) Bolton v. Bull, 3 Ves. 140.

(4) Hannar v. Playne, 14 Ves. J. 130. Vid. at law, patent established, 11 East, 101.

(5) Hill v. Thompson, 3 Merivale, 631, 2.

(6) Per Buller, J. in Turner v. Winter, 1 Term Rep. 602.

(7) Phil. Ev. 410.

(8) Per Gibbs, C. J. Manton v. Manton, Davies, 340, 1.

on the covenant, that the defendant was not estopped by his covenant from pleading, in bar to the action, that the invention was not new, or that the patentee was not the inventor, but that he might thus shew that the patent was void; and, consequently, that he had received no consideration (1). But where a patentee had assigned his interest in a patent, and afterwards, in violation of his contract, infringed the assignee's exclusive right, Lord Kenyon would not allow him to set up as a defence to an action by the assignee, that he had no title to convey, and that it was not a new invention (2). But where A. obtained a patent for an invention of which he *bonâ fide* supposed himself the first inventor, and agreed to let B. use it on payment of a certain annual sum, secured by bond, which sum was paid for several years, when B. discovered that A. was not the inventor, but that it was in public use before A. obtained his patent, and thereupon B. brought an action for money had and received, to recover back the amount of the annuity paid, and it was held that he could not recover (3). With regard to the assignment of the patent, it has been also held, that if the assignees of an uncertificated bankrupt, in their own names, execute a deed with other creditors, whereby they release him from all actions, claims, &c. and such deed be not signed by all the creditors, the assignees are not barred from claiming, in that character, the benefit of a patent afterwards obtained, and the patent obtained by an uncertificated bankrupt is affected by the previous assignment of the commissioners, and vests in the assignees (4). So, if the assignee of shares in a patent covenants that he has good right to convey, and that he has not by any means forfeited any right he ever had over the same, the generality of the former are not restrained by the latter (5). A patentee having assigned his patent while a suit was depending, reserving his legal estate in it until the suit was determined, and covenanting, upon the determination of the suit, to execute a further assignment, until which assignment the assignee was to stand legally possessed of the same, the assignee, in an action brough by him, was nonsuited, on the ground of no further assignment having been made; but on motion for a new trial, it was held that the legal estate vested without further assignment. (6)

(1) Hayne v. Maltby, 3 T. R. 438.

(2) Oldham v. Longmead, cited in Hayne v. Maltby, 3 T. R. 438.

(3) Taylor v. Hare, 1 N. R. 260.

(4) Hesse v. Stevenson, id. ibid.

(5) Id. ibid.

(6) Cartwright v. Amatt, 2 Bos. & Pul. 43.

Sixthly, The modes of annulling a patent.

We now come to the consideration of the modes in which patents may be vacated, *First,* By demise of the king. At common law the terms for which patents were granted, determined by this event (1); but now, by statutes of William the Third, and Queen Anne, they continue for six months after it (2), unless suspended by his successor (3); but the determination of one patent will have no such effect on another independent of it (4). *Secondly,* By act of law, &c. We have already seen that if there be any defect in either the patent itself or the specification, the patent may be avoided by shewing the defect, either on the trial of the patentees right at law, in an action for damages for infringement of the patent, or in answer to his suit in equity for an account, and injunction to prevent the further use of it (5). But it may be absolutely vacated by a writ of *scire facias,* which is in this case an original writ issuing out of the court of chancery (6), where the patent is recorded at the instance of any private person, but being in the name of the king, leave to issue it must therefore be previously obtained from the attorney-general (7). Such a writ lies in four cases, *First,* When the king grants by several letters patent, one and the same thing to several persons, the first patentee may have a *scire facias* to repeal the second, because it is granted to the prejudice of the first; and the king of right permits him, on petition, to use his name for its repeal (8). *Secondly,* Where the king hath unadvisedly granted any thing by letters patent upon a false suggestion, he may, by his prerogative, repeal his own grant by *scire facias.* A patent may be said to be obtained by false suggestion, if it is to the prejudice of the crown or community, or hurtful to trade by raising the price of a commodity, or in any other way contrary to the terms of the statute 21 Jac. 1. c. 3. (9). *Thirdly,* Where the letters patent express a grant which, by the laws of the land, the king cannot make. This may be either against the common or statute law, or both, by interfering with the industry of the people, or granting the sole use of any known trade or art, &c. (10). *Fourthly,* Where

(1) 1 Chalm. Op. 226.
(2) 7 & 8 Will. 3. c. 27. 1 Ann. c. 8. s. 2. 1 Chalm. Op. 227.
(3) Id. ibid.
(4) 1 Chalm. Op. 250.
(5) Ante. 210.
(6) Todd, 6th edit. 1098, note. 3 Lev. 220. 4 Inst. 88.
(7) 3 Bla. Comm. 260,1.
(8) 4 Inst. 88. 2 Ventris, 344.
(9) 3 Bla. C. 260. 1 Davies, 32.
(10) Davies, 432.

the patentee hath done an act that amounts to a forfeiture of the grant (1), for a grant of patent cannot stand, if abused. (2)

The writ having been issued for either of these causes, the patentee appears and pleads; on which the party prosecuting takes issue on such legal objections as may appear to the patent (3); on which the record of the proceedings on the writ is made up in chancery (4), andthen sent to a court of law, to be tried by a jury (5), who decide on the facts put in issue: and, upon their verdict, judgment is afterwards entered up, for or against the patentee accordingly. (6)

Different kinds of corporations, and utility.

The establishment of trading corporations forms another instance in which some restraint is laid on the general freedom of trade for the public benefit by the power of the crown. Corporations are divided into two kinds, sole and aggregate. A corporation aggregate, says Mr. Justice Blackstone, consists of several persons united together into one society, and is kept up by a perpetual succession of members, so as to continue for ever. A sole corporation is composed of one person only (7). Another division of corporations is into ecclesiastical and lay. And lay corporations are of two sorts, viz. civil, and eleemosynary. Of the lay corporations, established in the country for civil purposes (of which alone we are now to treat,) some are erected (8) for the regulation of trade, manufactures, and commerce, as the East India company, and the companies of trades in London, and other towns; some for the maintenance and regulation of other particular objects of public policy, as the corporation of the Trinity House for regulating navigation (9), the bank, and the different insurance companies in London; others for the advancement of science in general, or some particular branches of it, as the college of physicians and the company of surgeons,

(1) Dyer, 198. 3 Bla. C. 260.
(2) 1 Ves. J. 118.
(3) Hands, 17.
(4) Davies, 433.
(5) See 21 Jac. 1. c. 3. s. 2. Hands, 17.
(6) See Rex v. Arkwright, Bull. N. P. 7th edit. (76. c.)
(7) 1 Bla. Com. Co. Lit. 250. a.
(8) See 1 Bla. Com. 471. Kyd, 28, 9. These are all incorporated; there is also a society for the encouragement of arts, manufactures, and commerce, a most excellent institution, formed A. D. 1754, through Lord Folkstone, Lord Romney, Dr. Hales, and others, on the suggeston of Mr. Shipley, the object of which is the donation of premiums and bounties for useful discoveries, inventions, and improvements. See 3 And. Hist. Comm. Ann. 1754, p. 298, title, 'Royal Society,' *ad finem.* Poslethwaite's Com. Dict.
(9) Sawyer's Arg. Quo War. 9, and ante.

in London, for the improvement of the medical science; the royal society for the advancement of natural knowledge (1); the society of antiquarians for promoting the study of antiquities, and the royal academy of arts, for cultivating painting and sculpture. Other civil corporations are established for the purpose of local government, such as the corporations of cities and towns, under the names of mayor and commonalty, bailiffs and burgesses, and other similar denominations; and to this class seem properly to belong the general corporate bodies of the two universities. We have before considered the advantages resulting from companies for carrying on foreign trade (2). The advantages of an inland corporation consist in its being invested by the policy of the law, with perpetual succession under an artificial form; with the capacity of acting in several respects as an *individual*, particularly of taking and granting property; of contracting obligations; and of suing and being sued; of enjoying privileges and immunities in *common;* and of exercising a variety of political rights, more or less extensive according to the design of its institution, or the powers conferred upon it, either at the time of its creation, or at any subsequent period of its existence (3). The superiority which a formed body of this nature possesses over isolated individuals, especially for the purposes of commercial enterprize, is too obvious to require any comment.

By whom and how constituted.

The power of erecting *corporations*, whether mercantile or of any other nature, is vested, by the law of this country, in the king, without whose consent, either express or implied, no such institution is lawful (4). Some persons indeed are corporations *virtute officiorum* at common law, as the king himself, all bishops, parsons, vicars, and churchwardens, for certain purposes; these instances rest upon the authority of the common law, having been established in the early ages, before the constitution of the country and the prerogatives of the crown were established on their present basis (5). The only other modes by which a coporation

(1) Incorp. by charter of Cha. II. 22 April, 1663, by the name of the president, council, and fellows of the royal society of London, for cultivating and improving natural knowledge. See a full statement of the charter and statutes, &c. in Postlethwaite's Dict. tit. Royal Society.

(2) Ante, 1 Vol. 632, 3.

(3) Kyd, Introd. 13. As to the impolicy of granting corporation privileges, see 1 Smith, W. of N. 138. 143. 150-3. Hume's Hist. 404. Com. Dig. Trade, D. 1. Chitty's Appren. 5, 6.

(4) Skin. 224. 10 Co. 29. b. 33 b. Co. Lit. 250. a. 1 Rol. Abr. 512. l. 27. Ante, 1 Vol. 632, 3.

(5) 1 Bla. Com. 472.

can be legalized are by charter; by prescription, which supposes such charter; or by act of parliament (1). When it is intended that a corporation should be established with powers or privileges which, by the principles of the common law, cannot be granted by the king's charter, recourse must be had to the aid of an act of parliament: as if it be intended to grant the power of imprisonment, as in the case of the college of physicians; or to confer an exclusive right of trading, as in the case of the East India company (2); or when a court is erected with a power to proceed in a manner different from the common law, which is the case of the vice-chancellor's court, in the two universities (3). But most of those statutes which are usually cited, as having created corporations, either confirm such as have been previously created by the king, as in the case of the college of physicians before mentioned, which was erected by charter in the 10th year of Henry the Eighth, and afterwards confirmed in parliament, by an act of the 14th and 15th of the same king (4); or they permit the king to erect a corporation *in futuro*, with such and such powers, as in the case of the bank of England (5), and the society of the British fishery (6); so that the immediate creative act is usually performed by the king alone, in virtue of his royal prerogative (7). The creation may be performed by the words, "*creamus, erigimus, fundamus, incorporamus*," or the like; no precise terms are necessary (8). And it is held that if the king grants to a set of men to have *gildam mercatoriam*, a mercantile meeting or assembly, this is alone sufficient to incorporate and establish them for ever (9). The most ancient secular corporations, established *directly* by the king's charter, seem to have been gilds or incorporated companies of merchants, traders, and artisans; and it is not improbable that the practice of expressly incorporating whole towns by charter was introduced in imitation of these companies; for amongst other franchises conferred upon the inhabitants of towns by ancient charters, this was frequently one—that they should have *gildam mercatoriam*, or a merchant gild, by which they were estab-

(1) Com. Dig. Franchises, F. 2. 1 Bla. Com. 472.

(2) Vide Ante, 1 Vol. 662, 3. But see even at common law, Com. Dig. Trade, D. 1.

(3) Vid. Cro. Car. 73. 87, 88. Jenk. 97. 117.

(4) 14 & 15 H. 8. c. 5.—Vid. & Co. 114. Dr. Bonham's case, and see ante, 1 Vol. ch. 12.

(5) 5 & 6 W. & M. c. 20. and see other instances ante, in c. 12.

(6) 23 G. 3. c. 4.

(7) 1 Bla. Com. 473. Kyd, 61, 2

(8) 10 Co. 28. a. 30. b.

(9) 10 Co. 30.—1 Roll. Abr. 513. b. 1 Bla. Com. 473, 4.

lished as a coporate body, *gilda* signifying, according to Sir Edward Coke, an incorporate brotherhood or company; for which reason the place of their meeting was called the gild hall. And I have seen, says that author, a charter made by king Henry the first, to the weavers of London, by which he grants to them that they shall have *gildam mercatoriam*, and a confirmation of it made by Henry the second; by which charters, adds he, they were incorporated (1). But the grant of a *gilda mercatoria* does not seem to have invested the grantees with the local government of the place; for a *gilda mercatoria* established in a town may be distinct from the general corporation of the town (2). This observation, that the *gilda mercatoria* in England was something distinct from the corporate body vested with the local government of the place, receives confirmation from the actual state of the royal boroughs in Scotland. In most of these, there are several incorporated companies of trades, and a gildry, which is also an incorporated company, but distinct from the others; and the magistracy of the town is composed of members partly taken from the gildry and partly from the trades.

Powers, &c.

When a corporation is duly created many *powers*, capacities, and incapacities, are tacitly annexed to it, without any express provision; and of these, five are said to be necessarily and inseparably incident to every corporation. 1st, To have perpetual succession; and therefore all aggregate corporations have a power, necessarily implied, of electing members in the room of such as are removed by death, or otherwise (3). 2dly, To sue and be sued, implead and be impleaded, grant and receive by its corporate name, and do all other acts as natural persons may. 3dly, To purchase lands and hold them for the benefit of themselves and their successors. But on account of the statutes of mortmain, a corporation cannot hold lands without a licence from the crown, or an act of parliament (4). 4thly, To have a common seal; and, 5thly, To make bye-laws or private statutes for the better government of the corporation (5). But no trading company is allowed to make bye-laws which may affect the king's prerogative, or the common profit of the people,

(1) 10 Co. 30. a. 1 Rol. 513. Kyd, 63, 1st. ed.

(2) 1 Salk 203. 2 Lord Raym. 1129 1134. Mayor of Winton v. Wilks. Kyd, 61.

(3) 1 Rol. Abr. 514. 10 Co. 30. b.

(4) Co. Lit. 99. note 1. but a civil corporation may alien. 1 Ves. & B. 226.

(5) See post, 219, &c.

under a penalty of £40., unless they are approved by the chancellor, treasurer, and chief justices, or the judges of assize in their circuits; and even though they are so approved, still if contrary to law, they are void (1). The last two powers are not essentially incident to a corporation sole (2); and the power of making a bye-law, is not so inseparably incident to a corporation aggregate, that it cannot subsist without it; for there are some aggregate corporations to which rules and ordinances may be prescribed, and which they are bound to obey. Neither are these all the incidents which, without any express provision, are necessarily annexed by legal implication to an aggregate corporation; and it has been observed, that although many things are incident to a corporation, yet to form the complete idea of a corporation aggregate, it is sufficient to suppose it vested with the three following capacities. 1st, To have perpetual succession under a special denomination and under an artificial form. 2dly, To take and grant property; to contract obligations; and to sue and be sued by its corporate name, in the same manner as an individual. 3dly, To receive grants of privileges and immunities, and to enjoy them in common. These alone are sufficient to the essence of a corporation; neither the actual possession of property, nor the actual enjoyment of franchises is necessary (3). A corporation aggregate cannot be guilty of a crime, as of treason or felony (4), and consequently cannot be subject to the punishment of a criminal; nor can it take an oath, which is one reason why it could not do fealty (5), and why it cannot be executor or administrator (6); and, for the same reason, it cannot wage its law (7), neither can it be subject to ecclesiastical censures, and consequently cannot be excommunicated, nor summoned into the ecclesiastical courts (8); neither can it, as has been said, do or receive a personal injury, and therefore can neither sue nor be sued in an action of trespass for battery or false imprisonment (9); but an action of trover is maintainable against a corporation, and if it be essential to their conversion of the property, (as in a late case, the detainer of bank-notes, by the governor and

(1) St. 19 H. 7. c. 7. 11 Co. 54. see 7 Term Rep. 548.
(2) Vid. 1 Bla. Com. 475, 6.
(3) Per Holt, Skin. 311. 10 Co. 31. a. 3 Co. 75. b. Case of the Dean and Chapter of Norwich. See 1 Kyd, 69, 70.
(4) 10 Co. 32. b.
(5) Pl. Com. 213. 245. 10 Co. 32. b.
(6) Com. Dig. Administration, B. 2.
(7) 9 Co. 32. a.
(8) 10 Co. 32. a.
(9) Br. 2 Corpor. 63.

company of the bank of England,) that they should have authorized it under their seal, such authority will be presumed after verdict; but it does not seem necessary that the act of detention done by their servants, within the scope of their employment, should be authorized under their seal (1). It is incapable of a personal appearance; and therefore could not have done homage, because that could not be done by attorney (2), which is another reason why it could not do fealty; but it might have purchased land held by homage and fealty, and then it would have been considered as holding them by that tenure (3). For the same reason it cannot levy a fine (4), neither can it be apprehended or arrested, and therefore cannot be outlawed (5). But in an indictment for burglary, where the mansion-house is vested in the corporation, it must be laid as such, although it is inhabited by a servant; for although a corporation aggregate cannot be said to inhabit in any particular place, yet it may possess a house for the residence of its servants, and if the house be laid to be the property of the servant, when in truth it was the property of the corporation, the indictment will be bad. (6)

General duties, &c.

The general *duties* of all bodies politic, considered in their corporate capacity, may, like those of natural persons, be reduced to this single one, that of acting up to the end or design, whatever it may be, for which they were created by their founder (7). In general, a corporation aggregate commonly contract by instrument under the corporate seal (8), and in a late case which occurred in the court of king's bench, it was held that a corporation, not established for trading purposes, could not become acceptors of a bill of exchange payable at a less period than six months from the date, because such a case falls within the provision of the several acts passed for the protection of the bank of England, by which it is enacted, that it shall not be lawful for any body corporate to borrow, owe, or take up money upon their bills or notes, payable on demand, or at any less time than six months from the date thereof; the court seemed to think, that as the drawing of bills of exchange was foreign to

(1) 16 East, 6. and cases there cited.

(2) Co. Lit. 66. b.

(3) 33 H. 8. Br. Fealty, 15.

(4) Com. Dig. tit. 2 Fine, B.

(5) 10 Co. 32. a. cites 39 Ed. 3. 3. a. Bro. Utlagary, 72. Corpor. 11.

(6) 2 East, P. C. 501. and cases there cited.

(7) 1 Bla. Com. 479, 480.

(8) 5 East. 239. 242, 6 Vin. Ab. 317.

the purpose for which the corporation was established, which was for the erecting and carrying on water-works in a particular place, and as no power was expressly given to them to make promissory notes, or to become parties to bills of exchange, it was doubtful even if the bank acts were entirely out of the question, whether such a corporation would have power so to bind themselves, for purposes foreign to those for which they were originally established (1). But, without determining that point, this case seemed to be clearly within the prohibition of the several statutes passed for the protection of the bank of England (2). But an action was held maintainable at the suit of a remote indorsee against a commercial firm, consisting of seven persons, on a bill of exchange, payable at three months after date, the number of persons who drew the bill not being apparent on the face of it (3). It seems that if a corporation is authorized to raise money on promissory notes for a particular purpose, evidence may be received to show that they were issued for a different purpose (4). A company which has been entrusted by the legislature with the execution of a power from which mischief may result to the public, as, for instance, making an excavation in a public street, is bound to take especial precaution to guard against such mischief, and, in default, is responsible in damages. (5)

Secondly, Restraints on trade by bye-laws and customs.

The power of making *bye-laws* has been already observed to be incident to a corporation. We shall, therefore, in the next place, proceed to enquire how far the freedom of trade may be restrained or regulated by bye-law or custom.

A custom or a bye-law for the total restraint of trade is void (6). A *custom* not to use a particular trade in a particular city, &c. is bad, unless founded on some consideration (7). But a custom restraining trade *sub modo*, as foreign bought and foreign

(1) See as to the jurisdiction of the court of chancery with respect to an alienation for other than corporate purposes. 1 Ves. & B. 226.

(2) Broughton v. the Manchester Water-works Company, 3 B. & Ald. 1. 6 Ann. c. 22. s. 9. 15 Geo. 2. c. 13, s. 5. 21 Geo. 3. c. 60. s. 12.

(3) Wigan v. Fowler, 1 Stark. 459.

(4) Slack v. Highgate Archway Company, 5 Taunt. 792.

(5) Weld v. The Gas Light Company, 1 Stark. 189.; but see 4 T. R. 794.

(6) Com. Dig. Trade, (D) 2. and Bye-law, (C) 3. See instances.

(7) Id. Ibid. Mo. 342. Str. 111. 2 Lev. 210. 3 Lev. 241. 1 Salk, 204. 1 Mod. 21. & see post.

sold, whereby a non-freeman will be restrained from buying or selling goods to the foreigners within such city, is good as in regulation of trade (1). So a custom not to use a certain trade without bishops' licence, is good (2), though we have seen an express charter would not carry such grant (3). A prescription for baking all bread baked within a certain manor is good (4), and a custom that every butcher on market-day shall sell flesh on a stall in a market, and not at his own house, is good, as it respects the lord's franchise and right of stallage, &c. (5) A custom in London, that none but freeman shall keep shop or trade within the city, is good (6), and the practice hath continued so. So a custom of corporation of weavers, that only men free of their guild should intermeddle in London and Southwark, is good (7). But this custom does not extend to make him bound to belong to any particular company in London, for he has a liberty of any (8). So on the general principle, that under a power to make bye-laws none can be made in restraint of trade without a custom, a bye-law that no freeman of the city of London shall exercise the trade of a butcher without being free of the butchers' company, was adjudged void. (9) But it has been held that a bye-law, that all butchers, not free of the city, should take up their freedom in the butchers' company, and no butcher be admitted to the freedom of the city in any other company, and all butchers not free of the city, and en titled to their freedom of another company, should be made free of the butchers' company, on paying the usual fees and fine, was adjudged good. But a bye-law that no stranger shall exercise a particular trade within a city is good, if founded on precedent custom (10), and bad, if not so founded (11). But general customs in aid and support of bye-laws, may include new things and objects, which have not existed beyond the time of memory, if they are within the reason of such customs (12).

(1) Id. ibid. Dyer 279. b. Sir W. Jon. 162. 2 Roll. 202. l. 45.
(2) 8 Co. 125.
(3) Id. ibid. ante.
(4) 8 Co. 125. b. Cro. El. 203. 1 Leo. 142. Owen, 67. contr.
(5) 8 Co. 127. a. See ante Fairs and Markets, Stallage.
(6) Waggoner's case, 8 Co. 125—9.
(7) Cro. Eliz. 803.
(8) Bac. Ab. Bye-law (B.) Lutw. 564. 8 Co. 125 a. 5 Mod. 104. Comb. 373. S. C. Com. Dig. tit. Bye-law, C. 3.
(9) Harrison v. Goodman, 1 Burr. 12. Hesketh v. Braddock, 3 Burr. 1847.
(10) Woolley v. Idle, 4 Burr 1951. Bodwic v. Fennell, 1 Wils. 233.
(11) 1 P. Wms. 184.
(12) 1 Lord Raym. 499.

But a *bye-law*, that no one use his trade in a particular town who was not apprenticed to it therein (1), or till seven years after apprenticeship expired (2), is void, unless founded on custom or prescription (3). So a bye-law that more shall be paid for the enrolment of indentures of apprenticeship than is required by statute, is bad (4). And a bye-law restricting the number of apprentices to be taken by a member of the corporation, is void, as being in restraint of trade (5). But a bye-law requiring the enrolment of the apprentice-deed, in order to entitle the apprentice to his freedom, is good (6). A bye-law in London, that no freeman should sell his wares at a fair or market out of the city, was annulled by statute (7). So a bye-law by the merchant-adventurers, that none should sell or buy in the dominion of the Duke of Burgundy without their licence, was likewise annulled (8). A bye-law that a man shall not use his trade without the allowance of the corporation of tailors, or three of the masters and wardens, or proof that he was an apprentice, is void; for it does not appear what proof will be required, and therefore there may be a prohibition. (9)

So a bye-law against a man's using a trade, in a city, borough, &c., unless he be free there, is void, when there is *no custom* for it, and where the corporation was made within time of memory (10). The same rule applies to a bye-law, that every merchant-tailor put all or half his cloths to be dressed to cloth-workers of the same company, for this amounts to a monopoly (11). So a bye-law that a man shall sell no sand, but that which he gets out of the Thames, is void (12). But a bye-law that every candidate for the freedom of a city, shall be called at

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(1) Moor, 869. 1 Roll. 264. l. 20. Hob. 211, 12. Hutton 5, 6. S.C. Roll. Abr 364. Bac. Ab. Bye-law, B. Brownl. 49. Com. Dig. Bye-law. C. 3.

(2) 1 Roll. 364. pl. 3.

(3) Bac. Ab. Bye-law, B. Lutw. 564. Carter, 86. 114. Raym. 294. 2 Brownl. 178. 182. Bridgm. 140.

(4) The King v. Newcastle Coopers' Company, 7 T. R. 543.

(5) Id. ibid.

(6) The King v. Marshall, 2 T. R. 2.

(7) 3 Hen. 7. c. 9. 1 Roll. 363. l. 21.

(8) 12 Hen. 7. c. 16. 1 Roll. 363. l. 27.

(9) Com. Dig. Trade, C. 3. 1 Roll. Abr. 364. l. 42. 11 Co. 53, 4. 1 Roll. Rep. 4. Godbolt, 253. Hob. 211. and see the Weaver of Newberry's case, Norris v. Staples, Hobart 221. Bac. Ab, Bye-laws, (B.)

(10) Lutw. 564. 8 Co. 125. (a.) Godbolt, 253.

(11) 1 Roll. 364. l. 35. 11 Co. 86. Moore, 576, 577. 591. 2 Inst. 47.

(12) Raym. 293. Godbolt, 106. Bac. Ab, Bye-law, (B.)

three several meetings of the mayor, &c., and approved of by the majority, has been holden good, as providing a method for previously examining into the right of those who claim to be made free (1). So regulations for the exposing to view of cloth (imposed by common council) at Blackwell-hall, previously to sale, with a penalty for any sold without regard to the regulation and hallage of 1*d.* a cloth, is good (2). So a regulation tending to the more equal distribution of trade, viz. that none shall have above so many spindles in a week, is good (3). But the *regimen personarum* extends only to demeanor in their trade, and not to annex that to one trade which before belonged to another: thus a bye-law against bricklayers plastering with lime and hair, which was to belong to the plasterers, on a penalty, admitting this before to have been part of a trade of bricklayers, is void (4).

Where the object of a bye-law is merely to prevent fraud, and the provisions of it do no more than accomplish that object; then, though in strictness, a restraint may be laid on the freedom of trade, it will be considered only as a reasonable regulation, and consequently no custom will be necessary to support the bye-law. Of this kind is the bye-law of London just mentioned, respecting the Blackwell-hall factors, by which it was ordained, "that if any citizen, freeman, or stranger, within the said city, put any broad cloth to sale within the city of London, before it was brought to Blackwell-hall, to be viewed and searched, so that it might appear to be saleable, and that 1*d.* might be paid for hallage for every cloth, he should forfeit for every cloth 6*s.* 8*d.*" (5). So a bye-law, which has in view principally the regulation of police, though it prohibit the exercise of a particular trade within certain limits, is good without a custom. Such is the bye-law of the city of Exeter, "that no butcher or other person should, within the walls of the city, slaughter any beast." So a bye-law is good, which prohibits, under a penalty, the making or using of any dangerous machine within a city. Such is the bye-law of the city of London, "that no one shall make a

(1) Green v. Durham (Mayor of) 1 Burr. 131.; so, of ability of surgeons' apprentice in the Latin tongue before he can be bound, Rex v. Surgeons' Company, 2 Burr. 892.

(2) Bac. Ab. Bye-law, B. 5. Co. 62. Chamb. of London's case. 1 Roll. Abr. 365. S. C. 3 Leon. R. 64. S. C.

(3) 1 Lev. 229., and see 2 Roll. Rep. 391. Arg. 4 Mod. 227, 8, 9.

(4) Palm. 305.

(5) The Chamberlain of London's case, 5 Co. 62. b. Kyd, 149.

hot-press, nor use it in the city, under a penalty of £10 for making, and £5 for using it;" because the use of these presses is dangerous with respect to fire. (1)

So a bye-law is good, without a custom, which prohibits the exercise of some particular obnoxious trades in some particular streets of a city, as "that a man shall not set up a tavern in Birchin-lane," or "a brewhouse in Fleet-street," or "a butcher's," or "a chandler's shop in Cheapside." (2)

But if under pretence of a regulation of police a bye-law be made restraining trade, for the purpose of private gain, such a bye-law cannot be good without a custom to support it. Thus, where it appeared in the case of Pain and Haughton (3), that the city of London had made an act of common council, "that no carman should go with his cart on the streets of London without a licence, for which he should pay a certain sum of money to the president of a certain hospital for the use of the poor of that hospital;" this was adjudged void, because it restrained the liberty of the trade of a carman. (4)

But in the case of Player v. Jenkins (5), where it was returned "that by the custom of the city of London, the mayor and aldermen had power to regulate all the carts and carmen within the city; that certain ordinances were made by which the power of ordering carts was given to Christ's hospital, by the governors of which an order was made, 'that no one should use his cart within the city without their licence, and that there should be but 1000 carts used within the city; and if any one not licensed should use a cart there, he should forfeit 40*s*.'" This, upon the whole matter set forth, was resolved to be a good bye-law. (6)

A bye-law may be good in part, and void for the rest (7); for where it consists of several particulars, it is, to all purposes, as several bye-laws, though the provisions be thrown together under

(1) 1 Rol. Rep. 312. 1 Rol. Abr. 365. 3 Salk. 76.
(2) March 15. 1 Sid. 284.
(3) 1 Rol. Abr. 364.
(4) 2 Kyd, 150.
(5) P. 18. Car. 2, cited Skinner, 381.
(6) 1 Kyd. 150, 1.
(7) Per Pratt, C. J. Str. 469, et vid. Sayer, 256. acc. Vid. in Carter, 121, A *dictum* to the contrary by Bridgman, C. J.

the form of one. Thus, the bye-law regulating the corn-porters, which ordered, "that none but free-porters should intermeddle in importing or exporting any corn-roots, &c. within the limits of a custom to which the law referred, and imposed a penalty on the person who should so intermeddle, and also on the person who should employ any not free of the company." This bye-law, in an action brought against the employer, was held void as to the penalty imposed on him (1); but in an action brought against the person intermeddling, was held good. (2)

It was formerly doubted whether those corporations who have exclusive customs have an original right of action for the breach of them (3); but in an action on the case by the corporation of Colchester against one Sympson, for exercising a trade within the borough, not being a freeman, contrary to the custom, it was, in the 5 Geo. 2., solemnly determined by the court of common pleas, that they have (4); it is not therefore necessary for the corporation, having such a custom, to make a bye-law to enforce it; but such a bye-law is convenient for the sake of fixing the penalty at the precise sum (5). A bye-law cannot impose an oath, nor empower any person to administer it. To secure an obedience to a bye-law, it is necessary that a penalty of some kind should be annexed to the breach of it, for otherwise the bye-law will be nugatory (6). The only penalty admitted by the law of England is a pecuniary one, though either that may be recovered by action, or the payment of it enforced by distress of the offenders goods (7). That obedience to a bye-law cannot be enforced by imprisonment of the offender (8), or by the forfeiture of his goods (9), there are a multitude of authorities; and the reason assigned is, that they are both against Magna Charta. If these modes be adopted, an action of false imprisonment in the one case, trespass for the taking the goods in the other, may be maintained by the party who has been imprisoned, or whose goods have been seized (10); neither can

(1) Cuddick v. Estwick, 6 Mod. 123.

(2) Fazerkerly v. Wiltshire, Str. 462.

(3) Vid. Cro. Eliz. 803. 6 Mod. 21.

(4) Cited 1 Wils. 237.

(5) 1 Kyd, 155, 6.

(6) 5 Co. 63. b. 3 Leon. 265.

(7) 5 Co. 64 a.

(8) Moore, 411. n. 563. 5 Co. 64. a. 8 Co. 127. b.

(9) 8 Co. 127. b. 1 Bulstr. 11, 12. Kirk v. Nowell, 1 T. R. 118. Adley v. Reeves, 2 M. & S. 53.

(10) Clarke's case, 5 Co. 64. a. 1 T. R. 118. 1 Kyd, 156, 7.

a bye-law be enforced by avoiding any bond or covenant made in contravention of it. Therefore, if a bye-law be made, "that if any freeman take as an apprentice the son of a stranger, the bonds and covenants in the indenture shall be void," this is a bad bye-law as to the avoidance of the bonds and covenants, whatever may be said of the substance of it, as prohibiting the taking the son of a stranger for an apprentice; it ought to be enforced by a pecuniary penalty on the master for taking him. (1)

Thirdly, Restraint on Trade by Contract.

The law also prohibits any arrangements between individuals which would have the effect of restraining trade. A promise or obligation, which binds any one to a *total* or *general* restraint of his trade, is unlawful and void (2), although founded on consideration (3), or made only to continue for a certain term of years (4), or within the limit of certain counties (5). But a contract by which an individual, for good and adequate consideration, restrains himself from the exercise of his trade in any particular place, is binding (6). So a bond, covenant, or promise, not to use a trade with particular customers by name, if founded on a good consideration, is also valid (7); for in Mitchell v. Reynolds (8), which was an action of debt on bond, the defendant prayed oyer of the condition, which recited that whereas the defendant had assigned to the plaintiff a lease of a messuage and bakehouse in L., in the parish of St. A., for the term of five years, if the defendant should not exercise the trade of a baker *within that parish*, during the said term, or in case he did, should, within three days after proof thereof made pay to the plaintiff £50, then the obligation to be void; and pleaded that he was a baker by trade, that he had served an apprenticeship to it, by reason whereof the bond was void in law, wherefore he traded, as he well might; and on demurer, the court was of opinion that a special consideration being set forth in the condition, which shews it was reasonable for the parties to enter into it, the bond was good; and that the true

(1) Moore, 411. n. 562. F. 2 Kyd, 157.
(2) Y. B. 2 H. 5. 5. Colgate v. Bachelor. Cro. Eliz. 872. Com. Dig. Trade, D. 3.
(3) Alleyn, 67.
(4) Id. ibid. Moore, 115. Owen, 143.
(5) Owen, 143.
(6) Prugnell v. Gosse, Allen, 67. Mitchell v. Reynolds, 1 P. Wms. 181. 10 Mod. 27. S. C. Fortescue, 296. S.C. 2 Saund. Rep. 156. n. 1. 8 East, 85.
(7) Hunlocke v. Blacklowe, 2 Saund. 156.
(8) 1 P. Wms. 181. and 2 Saund. 156. n. 1.

distinction was not between promises and bonds, but between contracts with and without consideration; and that wherever a sufficient consideration appeared to make it a proper and an useful contract (1), and such as could not be set aside without injury to a fair contractor, it ought to be maintained, but with this constant diversity, viz. where the restraint is general not to exercise a trade *throughout the kingdom*, and where it is limited to a *particular place*, that the former is void, being of no benefit to either party, and only oppressive, but the other is good. So where a man, in consideration that the plaintiff would buy all the goods in his shop, promises that he will not afterwards use his trade in the same shop, the promise is good (2); or where, in consideration that the plaintiff bought his decayed wares at the first price, he promised that he would not use his trade afterwards in the same town (3), or where the consideration was, that the plaintiff should marry the defendant's daughter (4). So a promise made by the defendant, in consideration that the plaintiff would take his house for twenty-one years, that he would not suffer the same trade in the next shop during the term, is good (5). So a bond with condition not to set up trade within half a mile of the plaintiff's dwelling-house, nor any other that she, or her executors or administrators, should remove to, and not to carry on the trade of a linen-draper, nor to instruct or assist any other, is good, being founded on the consideration that plaintiff had taken defendant to instruct and maintain without money (6). So articles of agreement not to set up the trade taught within the bills of mortality, on penalty of £44, are good. (7)

Therefore where a bond was given by B., conditioned, that in consideration that A. would take B. as an assistant in his business as a surgeon, for so long time as it should please A., B. agreed not to practise, on his own account, for 14 years, within 10 miles of the place where A. lived; the security was

(1) 8 East, 85.

(2) Com. Dig. Trade, D. 3. cites Allen, 67. Noy, 98. 2 Roll. Rep. 201. Cro. Jac. 596. 2 Bulstr. 136. Cro. Eliz. 872.

(3) Id. ibid. Cro. Jac. 596. 1 Roll. 16. l. 50. Jon. 13. 2 Roll. 201.

(4) Id. ibid. 1 Roll. 17. l. 5. Al. 67. Str. 111.

(5) Id. ibid. Cro. Jac. 326. 2 Buls. 136.

(6) Cheesman v. Nainby, Fortesc. 397.; affirmed on error in B. R. and parliament, the twelve Judges being in attendance and unanimous. Stra. 739. Lord Raym 1456.

(7) Clerk v. Comer, Rep. Temp. Hardw. 53.

holden good (1). In a late case, Lord Ellenborough held that the proper method of admeasurement of distances stipulated in these contracts, is by the shortest method of access by the footpath (2). A contract entered into by a practising attorney, to relinquish his business, and recommend his clients to two other attorneys, for a valuable consideration, and that he would not himself practise within certain limits, and would permit them to make use of his name in their firm for a certain time, but without his interference, &c. was held to be valid in law (3). But on a bill in chancery for the specific performance of an agreement for giving up an attorney's business for a certain sum of money, the Master of the Rolls refused to decree a specific performance to that effect, where no other terms were inserted, or means devised for the transfer of the relator's business into the hands of the other party, in return for the defendant's purchase-money, and because there were no conditions generally applicable to transactions of this nature, so as to come within the description of "usual clauses" to be inserted in an instrument to be drawn up in pursuance of the agreement (4). The case of Bunn v. Guy was noticed as being a case where there was no occasion to consider whether the agreement could be specifically performed, and in which the only question was, whether there was a legal consideration for all the securities that had been actually executed; and there were also means devised for the plaintiff's performance of his part of the agreement, by his stipulation not to practise within a certain distance of London; that his name should be used in the firm after he had quitted the business; and, principally, that he should use all his influence with his clients to become the clients of the defendant (5). As also there were no conditions generally applicable to transactions of this nature, which could come within the meaning of the term "usual clauses;" no security was afforded to the defendant for the full enjoyment of his right, as the plaintiff might, unless restrained by positive contract, though he had sold the good-will of a trade, set up a business of the same kind, at the same place, whenever he pleased. (6) The mode of constru-

(1) Davis v. Mason, 5 T. R. 118.; and see Colmer v. Clarke, 7 Mod. 230. and Sloman v. Walter, 1 Brown, Ch. C. 418.

(2) Woods v. Dennett, 2 Stark. N. P. 89.

(3) Bunn v. Guy, 4 East, 190.

(4) Bozon v. Farlow, 1 Merivale Rep. 459.

(5) 1 Merivale, 472.

(6) Cruttwell v. Lye, 17 Ves. 335.

ing agreements of this nature, and the adequacy of consideration for them, which will be sufficient to prevent their being considered illegal restraints on trade, have also come in question in a late case in the court of King's Bench, in which the whole doctrine was reviewed and settled. By indenture between A., and B. and C. dissolving their partnership as rope-makers, A. and B. covenanted to allow C. during his life, 2*s.* on every cwt. of cordage, which they should make on the recommendation of C. for any of his friends and connexions, and whose debts should turn out good, and that A. and B. should stand the risk of such debts incurred, but should not be compelled to furnish goods to any of C.'s connexions whom they should be disinclined to trust; and C. covenanted not to carry on the business of a rope-maker during his life (except on government contracts); and that all debts contracted or to be contracted in his or their names pursuant to the indenture, should be the exclusive property of A. and B.; and that C. should, during his life, exclusively employ A. and B., and no other person, to make all the cordage ordered of him by or for his friends and connexions, on the terms aforesaid, and should not employ any other person to make any cordage on any pretence whatever. It was held that the covenant by C. to employ A. and B. exclusively to make cordage for his friends, and not to employ any other, &c. A. and B. not being obliged to work for any other than such as they chose to trust, was not illegal and void, as being in restraint of trade without adequate consideration; for the whole indenture must be construed together, according to the apparent reasonable intent of the parties, and the general object being only to appropriate to A. and B. so much of C.'s private trade as they chose to give his friends credit for, so much only was covenanted to be transferred, and C. was still at liberty to work for any of his friends who were refused to be trusted by A. and B.; by which construction the restraint on C. was only co-extensive, as in reason it could only be intended to be with the benefit to A. and B., and therefore the restraint on C. could be no prejudice to public trade. (1)

Fourthly, Restraints of Trade, &c. by statute, and of literary property.

The provisions made by the legislature with regard to the freedom or restraint of trade, will next require attention (2). At com-

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(1) Gale and others v. Reed, 8 East 79.

(2) As to freedom of trade, see ante vol. 1. chap 4.

mon law every subject might exercise any trade or profession he pleased, without limitation or controul, and there are several statutes to be found in the early part of our history, which were made in protection of that general liberty (1). By the 30th chapter of Magna Charta, "free liberty of coming in, going out, and continuing in England, and of buying and selling without any manner of evil tolls, according to the old and rightful customs, except in time of war," is given to all merchants except to those who were formerly prohibited; and if the country from which they come be at war with this country, they are to be attached without harm to their body or goods, till it be known how the merchants of this country are treated in theirs, on which their treatment here is to depend. By 9 Ed. 3. c. 1. it is enacted, that all merchants, strangers, or denizens, shall have full liberty to buy and sell the several articles there enumerated, and in general every thing vendible, to persons of every description, without hindrance from any person whatever, in any city, borough, town, sea port, fair, market, or elsewhere, within franchise or without, except enemies to the king or realm. And if within any franchise any one shall complain to the mayor, or other officer, having rule within such franchise, and such mayor or other officer shall refuse remedy, and be thereof attainted; the franchise shall be forfeited, and the officer, and the disturber, shall be bound to restore double damages to the party grieved; if such disturbance be in a place where there is no franchise, then the lord, or the bailiff or constable, being present, shall do right, or being attainted of refusal, shall forfeit double damages to the party-plaintiff; and in both cases the disturbers shall have one year's imprisonment, and nevertheless be ransomed at the king's will. It is declared, by the same statute, that these provisions shall hold good, notwithstanding charters of franchise granted to any city, borough, town, port of the sea, or other places within the realm, and notwithstanding usage, or custom, or any judgment given on such charters, usages, or customs, which are all declared to be of no effect, so far as they are in opposition to this statute. By 14 Ed. 3. c. 2. in confirmation of the great charter, the king at the request of the prelates, earls, barons, and commons, grants for himself, his heirs and successors, that all merchants, denizens and foreigners, except enemies, might, without let, safely come into England with their goods and mer-

(1) Vide Com. Dig. tit. Trade, A. 5. R. and infra, 2 Kyd. 125.

chandizes, and safely *tarry*, and safely return, paying the customs, subsidies and other profits reasonably due, so always that franchises and free customs, reasonably granted by the king, and his ancestors, to the city of London, and other cities, boroughs, and town, should be to them saved. By the 25. Ed. 3. st. 4. c. 2. that of the 9 Ed. 3. is repeated and enforced, and it is provided in terms more particularly guarded, that every merchant or other, as well alien as denizen, of what condition soever he be, who shall bring wine, &c. to the city of London, or other cities, boroughs, towns, or sea-ports, may freely, and without challenge or impeachment of any, sell, *in gross or retail*, or by parcels, at his will, to all *manner* of people that will buy the same, notwithstanding any franchises, grants or customs used, or other thing done to the contrary. And the reason given for this ordinance by the legislature is that such usages and franchises are contrary to the common good of the king and his people. By 37 Ed. 3. c. 5. complaint is made of the mischiefs, which had arisen from merchants purchasing various kinds of goods, while the market was full, and afterwards selling at high prices, to remedy which it is enacted, that no merchant shall deal in more than one commodity: by c. 6. the same restraint is imposed on handicraft trades, but the very next year that part which relates to merchants is repealed (1), and full liberty given them to deal in what merchandize they please. The statute of 2 R. 2. c. 1. after reciting the 9 Ed. 3. and 25 Ed. 3. before mentioned, and complaining, that notwithstanding these statutes, merchants, strangers and others were grievously oppressed by the citizens, and burgesses of different cities and boroughs, gives free liberty to merchants, aliens and denizens to buy and sell, in gross and by retail, as well in the city of London, as in all cities, boroughs, ports of the sea, fairs, markets, and other places within the realm, certain articles enumerated (2), and all such small wares: but it orders, "that all manner of wines, as well sweet as other, shall be sold by such strangers only in gross, and not by retail, in cities, boroughs and other towns franchised," and confines the liberty of selling them by retail to the inhabitants and freemen.

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(1) 38 Ed. 3. c. 2.

(2) Corn, flesh, fish, and all manner of other victuals, and also all manner of spiceries, fruits, fur, and all manner of small wares, as silk, gold wire, or silver wire, coverchiefs, and other such small ware.

With respect to such *articles* as the statute describes under the denomination of great wares (1), it gives full liberty to every person, as well alien as denizen, to sell them in gross, as well in the city of London, as in other cities, boroughs, ports of the sea, towns, fairs, markets, and elsewhere through the realm, within franchise, and without, but confines the liberty of selling them by retail to the inhabitants and freemen : merchants, strangers, or denizens, however, are permitted to buy and sell their wools, woolfells, wares, cloths, iron, and other merchandizes, at fairs and markets in the country, in gross or by retail, as they might have done before.

The statute, 11 R. 2 c. 7. recites at full length the 9 and 25 Ed. 3. confirms them in every particular, and in general terms declares void, and repeals all statutes in any respect contrary to these two. The statutes 16 R. 2. c. 1. recites the 9 and 25 Ed. 3. and 11 R. 2. and then premising, " that these statutes, if they should be fully holden and executed, would extend to the great hindrance and damage, as well of the city of London, as of other cities, boroughs, and towns, within the realm," ordains, " that no merchant stranger alien shall sell, or buy, or merchandize within the realm, with another stranger merchant alien to sell again, and that no stranger merchant alien shall sell to retail within the realm, nor shall put to sale, any manner of wares, or merchandize except *livings* and *victuals*, and also that aliens shall sell wines, by whole vessels, and spicery by whole vessels and bales, and in no other manner, and that no manner of spicery, after it shall be brought into the realm, shall be carried out of it, by alien or denizen, on pain of forfeiture of the same ;" but this part prohibiting the exportation of spicery, once brought into the realm, on pain of forfeiture is repealed by st. 3 C. 1. c. 4. s. 27. There are also various other statutes, that regulate the trade of aliens with this country, which have been already noticed (2). By 3 H. 7. c. 9. a bye-law of the city of London, " that no freeman shall sell his wares at a fair, or market out of the city," was annulled, and by 12 H. 7. c. 6. a bye-law of the merchant adventurers of London, " that none should sell or buy in the dominions of the Duke of Burgundy," was also annulled. (3)

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(1) Cloth of gold and silver, silk, sendal, napery, linen cloth, canvas, and other such great wares, and also, all manner of other great merchandizes, not above expressed, whatsoever they be.

(2) Ante, 1 Vol. 131. to 168.

(3) Vid. 1 Rol. Abr. 363.

With respect to *handicraft* trades, every man previously to the 37 Ed. 3. c. 6., might have exercised whatever trade he pleased, and as many trades as he pleased, in any part of the kingdom, except in those corporate towns where there was an immemorial custom imposing some particular restraint (1); and though by that statute, which was very soon repealed, a man was confined to the exercise of one particular trade, yet till the 5 El. c. 4. he might, without any preliminary service in the nature of an apprenticeship, have practised any trade, in any part of the kingdom, under the same exception. The judges on many occasions, observe, that unskilfulness in the trade which he pretends to practise, is a sufficient punishment to the tradesman, because upon his skill depends the extent of his employment (2), and where any man, who employs the tradesman, receives any damage from the unskilful manner in which the work is executed, the common law has provided a remedy by action (3) By the statute 5 Eliz. however, every person was "restrained from setting up, occupying, using, or exercising any craft, mystery, or occupation, then used in England or Wales, except he should have been brought up therein seven years at least as an apprentice, on pain of forfeiting 40*s.* a month." But this provision, which as we shall presently see is now altogether repealed, was at various times abolished by the legislature, in certain particular cases. Thus, by the 15 Car. 2. c. 15. hemp-makers of all kinds, net-makers, and makers of tapestry hangings, may set up without having served seven years. By the 24 G. 3. sess. 2. c. 6. s. 4. all officers, mariners, and soldiers, who have been in the land or sea-service, or in the marines, or militia, or any corps of fencibles, since the second year of his said Majesty's reign, and have not deserted, their wives and children may exercise such trades as they are apt for in any town or place (4). By 6 & 7 W. 3. c. 17. an apprentice discovering two offenders, guilty of coining, so that they may be convicted, shall be deemed a freeman, and may exercise his trade as if he had served out his time. And by the 17 G. 3. c. 33. it shall be lawful for any person carrying on or using the trade of a dyer, in Middlesex, Essex, Surrey and Kent, to employ journeymen, who have not served an apprenticeship to the trade, without incur-

(1) Com. Dig. Trade, A. 5. 11 Co. 53. b. 511. a. Hob. 211. cont. Palm. 396. 2 Rol. Rep. 392. Dict. cont. Sir James Ley, C. J. and Doddridge, J.; and see 2 Rol. Rep. 391. Palm. 396 Show, 267.

(2) Vid. 2 Bul. 191.

(3) Vid. 1 Saund. 312.

(4) And see 3 G. 3. c. 8. and 56 G. 3. c. 67. infra.

ring any penalty. The like liberty is given to hatters, *generally* by the 17 G. 3. c. 55. s. 5. and to woolcombers, by the 35 G. 3. c. 124. and licensed pedlars and hawkers are authorized to trade by the 50 G. 3. c. 41. s. 22. And the statute 54 G. 3. c. 96. after reciting that "it had been enacted (by the statute 5 Eliz.) that it should not be lawful for any person, other than such as then did lawfully exercise any art, mystery, or manual occupation, to set up or exercise any craft, mystery, or occupation, then used in England or Wales, except he should have been brought up therein seven years as an apprentice, nor to set any person on work not being a workman at that day (except he should have been apprentice as aforesaid, or else having served as an apprentice, should become a journeyman, or hired by the year,) on pain of forfeiting 40*s.* a-month," provides that so much of the said recited act shall be, and the same is thereby repealed (1). The 54 G. 3. also declares that it shall be lawful for any person to take or retain an apprentice, or for any person to become an apprentice, although not according to the provisions of that act, and indentures, deeds, and agreements in writing, entered into for that purpose, which would be otherwise valid are binding, notwithstanding the repeal of the statute 5 Eliz. (2) Justices of the peace may still hear and determine complaints that arise respecting apprenticeship, as they might have done under the statute, 5 Eliz. (3) The 5 Eliz. exempted the cities of London and Norwich from the operation of the act (4); and the late statute 54 G. 3. c. 96. declares that it shall not extend to defeat, alter, or prejudice the custom and order of the city of London concerning apprentices, or the ancient custom, usages, privileges, or franchises of that city, or of any other city, town, corporation, or company lawfully constituted, or the citizens and freemen thereof, or any bye-law or regulation of any lawfully constituted corporation or company (5). A late statute has been passed, 56 G. 3. c. 67., to enable officers, mariners, and soldiers, who have been in the land or sea-service, or in the marines, or militia, or any corps of fencible men, since the 42 G. 3., to exercise trades, notwithstanding the customs and bye-laws of particular places. After reciting that there are divers, officers, mariners, soldiers, and marines, who have served his Majesty in the late wars by sea and land, some of whom are men that used trades, others that were apprentices to trades, who have not served out

(1) 54 G. 3. c. 96.
(2) 54 G. 3. c. 96. s. 2.
(3) 54 G. 3. c. 96. s. 3.
(4) 5 Eliz. c. 4. s. 40.
(5) 54 G. 3. c. 96. s. 4.

their times, and others who, by their own industry, have made themselves apt and fit for trades, many of whom, the wars being now ended, would willingly employ themselves in those trades which they were formerly accustomed to, or which they are apt or able to follow and make use of, for getting their living by their own labour, but are or may be hindered from exercising those trades in certain cities and corporations, on account of the bye-laws and customs of particular places, the statute provides, that all such officers, mariners, soldiers, and marines, as have been at any time employed in the service of his Majesty, since the 22d day of June 1802, and have not since deserted the said service, and also the wives and children of such officers, mariners, soldiers, and marines, may set up and exercise such trades as they are apt and able for in any city, town, or place within this kingdom, without let or molestation, nor shall such officers, mariners, soldiers, or marines, or their wives and children, during the time they shall exercise such trades, be removable to their last legal place of settlement until actually chargeable; and if any such officer, mariner, soldier, or marine, or the wife or child of any such person, shall be sued, impleaded, or indicted for using such trade, he shall be acquitted on the general issue, on making the facts appear; and if the prosecutor in any manner fail in his suit, the defendant will be entitled to double costs (1). This act also declares, that it shall be lawful for two or more justices of the peace for a place where such an offender shall set up a trade, to cause him to be summoned before them in order to make oath of the place of his last legal settlement; and such justices are required to give an attested copy of the affidavit to the person making it, to be produced when required: the attested copy is evidence at the sessions; but if any such officer or other person should be summoned a second time before the justices, he may be discharged without taking any further oath, on leaving a copy of such attested copy of his examination, if required so to do (2). This act extends to all officers and soldiers, who have personally served in the militia, or any of the fencible regiments, from the 22d day of June 1802, for the term of five years, and have been honourably discharged (3). But it does not prejudice the privileges of the universities of Cambridge or Oxford, nor give liberty to any person to set up the trade of a vintner, or to sell any wine or other liquors, in either of the universities, without licence from the vice-chancellor. (4)

(1) 56 G. 3 c. 67. s. 1.
(2) 56 G. 3. c. 67. s 2.
(3) 56 G. 3. c. 67. s. 3.
(4) 56 G. 3. c. 67. s. 4.

That part of the statute of Eliz. which requires seven years apprenticeship previously to setting up in trade, having been repealed, it will not be necessary to state the law upon this subject at any great length. The act was confined to persons under age, and therefore, a contract for the binding of an adult, would at all times have been good, though not made in conformity to the 5 Eliz. (1) And a contract for a less term than seven years was only voidable and not void (2); and the circumstance of the apprentice's absenting himself, does not amount to an act of avoidance (3). The apprentice himself must execute the deed in order to make a valid binding, whether he be an infant or adult, and although his father is a party; for it is only in the case of a compulsory binding of a parish apprentice, that the apprentice's assent can be dispensed with (4). A stamp is necessary (5); and if the proper duty be not paid, the relation of master and apprentice will not exist (6). It is to be paid by the master and not by the parent (7), and where the master has refused to pay it, he cannot recover on an agreement to put the son as an apprentice, nor can he establish a demand for board or lodging, although the youth may have resided with him a considerable time (8). But if the father of an apprentice seek to recover back a sum paid upon the execution of an indenture of apprenticeship, void by the 8 Ann. c. 19. for not truly expressing the premium, it is necessary to shew that he was imposed upon by the defendant (9). No action can be supported on a note given as an apprentice fee, if it appear that the deed executed was void for want of a stamp (10). But it is no objection to an action on a promissory note, that it was given as part of the consideration of an indenture of apprenticeship for less than seven years, nor does the consideration fail, because the apprentice was discharged by a magistrate after two years, on account of the master having enticed him to commit felony, particularly when the apprentice fee was

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(1) Smedley v. Gooden, 3 M. & Selw. 189.

(2) Gray v. Cookson, 16 East 13. 207. 3 M. & Selw. 189. 6 Term Rep. 652. id. 310. 314. Chitty on App. 33. & seq. but see Guppy v. Jennings, 1 Anstr. 256. Burney v. Jennings, 6 Esp. 8. Manford, 31. contr.

(3) Id. ibid.

(4) The King v. Amiesly, 3 M. & S. 584. Rex v. Cromford, 8 East, 25. Rex v. Ripons, 9 East, 295. Chitty on Apprent. 29, 30.

(5) 44 G. 3. c. 98. s. 24. 55 G. 3. c. 184.

(6) Aldridge v. Ewen, 3 Esp. Rep. 188.

(7) Keelev. —— K. B. T. T. 1819. Manning's Index, 271. S. C. Nom. Keene v. Parsons, 2 Stark. 506.

(8) Id. ibid.

(9) Shepherd v. Hall, 3 Campbell's, Rep. 180.

(10) Jackson v. Warwick, 7 T. R. 121.

to be paid in the first instance, although in case of the defendant a note was taken for part of it payable at a distant time (1). It appears, that in some cases the indenture must be enrolled (2); but it is said that where this has taken place, there is no necessity to give strict proof of the execution of the deed (3). The laws with respect to the binding of parish apprentices (4), and to the assignment (5) and registry thereof (6), and to the money given to bind out poor apprentices (7), and to the binding of poor apprentices to the sea-service (8) to the reciprocal rights and liabilities of masters and apprentices, and the jurisdiction of magistrates over them (9), are applicable to the relation of master and apprentice as it exists at the present day. The humanity of the legislature has also given rise to numerous laws, for bettering the condition of the inferior orders of apprentices, as for instance the statute 42 G. 3. c. 48. with respect to the binding of poor children, if above eight years old, to chimney-sweepers; and the statutes 28 G. 3. c. 73. 59 G. 3. c. 66. and 60 G. 3. c. 5. for the preservation of the health and morals of apprentices, employed in cotton, and other mills, and factories. The 42 G. 3. enacts that all cotton and woollen mills and cotton and other factories, wherein three or more apprentices, or twenty or more other persons, shall at any time be employed, shall be subject to the several rules and regulations contained in the act. These rules provide, that every room shall be washed with quick lime and water twice at least in a year, and a proper supply of fresh air admitted through the windows and openings; and that the male apprentices shall sleep separately from the female, and only two in a bed; that every master shall supply his apprentice with two complete suits of clothing; that no apprentice shall be compelled to work more than 12 hours a day, (reckoning from six in the morning to nine at night), exclusive of the time employed in eating; and no apprentice employed to work between nine at night and six in the morning; that every apprentice shall be in-

(1) Grant v. Welchman, 16 East, 207.

(2) See Chitty on Apprentices.

(3) Anon. Skinner, 579. Chitty, App. 60. But see 5 Esp. Rep. 16. 4 East, 53. id. ibid.

(4) See 43 Eliz. c. 2. s. 5. 56 G. 3. c. 139. 51 G. 3. c. 80. 54 G. 3. c. 107. Burn. J. tit. Apprentices, s. 4.

(5) 32 G. 3. c. 57. s. 7. 56 G. 3. c. 139. s. 9. 20 G. 3. c. 36. 42 G. 3. c. 46. s. 8. Burn. J. tit. App. s. 4.

(6) 42 G. 3. c. 46.

(7) 7 Jac. 1. c. 3.

(8) 2 & 3 Ann. c. 6. 4 Ann. c. 19. 13. G. 2. c. 17. 2 G. 3. c. 15. s. 22. to 25 Burn. J. tit. Apprentice, s. 7.

(9) Burn. J. tit. Apprentices sec. 10. Chitty on App. 62. to 88.

structed in some part of every working day, for the first four years of his apprenticeship, in reading, writing, and arithmetic, according to his age and abilities, the time so occupied being taken out of his usual hours of working (1); that every apprentice shall receive religious instruction on a Sunday, in the way specified in the act (2); that the justices at the Midsummer sessions shall appoint two persons as visitors, one of them a justice and the other a clergyman, or, if that mode be inconvenient, two justices, or two clergyman (3); that the visitors, or either of them, may from time to time enter and inspect any such mill or factory during day-time, or the hours of employment, and report from time to time in writing, to the sessions, the state and condition of the place, and the apprentices therein, such report to be entered by the clerk of the peace among the records of the sessions, in a book kept for that purpose. If six or more mills or factories be in any county, the justices may divide such county into two or more districts or parts, and appoint two such visitors for each of them (4). In case of infectious disorders the visitors may require the master to call in medical assistance (5); a penalty of not more than £10 nor less than £5 is incurred by obstructing visitors (6), not more than £5 nor less than 40s., by a master offending against the act, half to the informer, and half to the poor; the information to be laid within one month (7). Penalties are to be recovered before two justices (8), and two or more copies of the act are to be affixed in every mill or factory (9). The statute 59 G. 3. c. 66. enacts, that no child shall be employed in any description of work, for spinning cotton wool into yarn, or in any previous preparation of such wool, until he shall have attained the full age of nine years (10). The act provides, that no person being under the age of sixteen years, shall be employed in any work, in spinning cotton wool into yarn, or the previous preparation of such wool, or in the cleaning or repairing of any mill, manufactory, or building, or any mill-work, or machinery therein, for more than 12 hours in any one day, exclusive of the necessary time for meals, such 12 hours to be between five in the morning, and nine in the

(1) 42 G. 3. c. 73. s. 6.
(2) s. 8.
(3) s. 9.
(4) 42 G. 3. c. 73. s. 9.
(5) s. 10.
(6) s. 11.
(7) s. 13.
(8) s. 15.
(9) s. 14. Form of conviction, by s. 16.
(10) 59 G. 3. c. 66.

evening (1). To every person there is to be allowed in the course of the day, not less than half an hour to breakfast, and one hour to dinner, the hour for dinner being between eleven in the forenoon and two in the afternoon (2). If at any time, in any such buildings as are situated upon streams of water, time shall be lost in consequence of the want of a due supply, or of an excess of water, it shall be lawful for the proprietors to extend the time at the rate of one hour per day, until the lost time has been made good (3). The ceilings and interior walls are to be washed with quick lime and water twice in every year (4). A copy of the act, signed by the proprietor or overseer, is to be hung up in a conspicuous part of the place (5). Any master offending against the act is liable to forfeit, for every offence, not more than £20. nor less than £10., one half to the informer, and the other half to the overseers of the poor in England, to the churhwardens in Ireland, or the ministers and elders in Scotland; informations for offences being, in all cases, laid within three calendar months after the commission of the several offences (6). A later statute of the 60 G. 3. c. 5. after reciting the passing of the 59 G. 3. c. 66., and that it was expedient to provide for accidents by fire, or otherwise, which might arise in the working of such mills or factories, by which many persons might besuddenly deprived of employment, enacts, that in such a case, the proprietors possessing other mills, which are kept at work during the day, shall, for eighteen months from the day on which any such fire or other accident shall happen, be allowed to employ the persons who were previously at work on the mills so destroyed, and employ them in the night-time in any other mills, for any period not exceeding 10 hours in one night. (7)

Literary Property.

The exclusive right of the *anthor of literary property*, and his assigns, is also deserving of notice among those restrictive regulations that affect our internal trade. The origin of this right (though it is doubtful if any exclusive right existed at common law), is reducible, (says Mr. Justice Blackstone,) as it is founded on labour and invention, to the same source as that of all property ac-

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(1) 59 G. 3. c. 66. s. 2. When may be employed at night in case of fire, see 60 G. 3. c. 5. infra.

(2) 59 G. 3. c. 66. s. 3.; but this has been altered, and the hour for dinner may now be between eleven four. 60 G. 3. c. 5.. s. 2.

(3) 59 G. 3. c. 66. s. 4.

(4) s. 5.

(5) s. 6.

(6) s. 7.

(7) 60 G. 3. c. 5.

quired by occupancy (1). When a man, by the exertion of his rational powers, has produced an original work, he seems clearly to have a right to dispose of that identical work as he pleases, and any attempt to vary the disposition he has made of it appears to be an invasion of that right. The identity of a literary composition consists in the sentiment and *the language;* the same conceptions clothed in the same words must necessarily be the same composition, and whatever method is taken of exhibiting that composition to the ear or the eye of another, by recital, by writing, or by printing in any number of copies, or at any period of time, it is always the identical work of the author which is so exhibited, and no other man, it has been thought, can have a right to exhibit it (especially for profit), without the author's consent. This consent may perhaps be tacitly given to all mankind, when an author suffers his work to be published by another hand without any claim or reserve of right, and without stamping on it any marks of ownership, it being then a present to the public like building a church, or bridge, or laying out a new highway; but in case the author sells a single book, or totally grants the copyright, it hath been supposed in the one case, that the buyer hath no more right to multiply copies of that book for sale, than he hath to imitate, for the like purpose, the ticket which is bought for admission to an opera, or concert, and that in the other, the whole property, with all its exclusive rights, is perpetually transferred to the grantee; on the other hand, it is urged that though the exclusive property of the manuscript and all which it contains, undoubtedly belongs to the author *before* it is printed or published: yet from the instant of its publication the exclusive right of an author, or his assigns, to the sole communication of his ideas, immediately vanishes and evaporates, as being a right of two subtile and insubstantial a nature, to become the subject of property at the common law, and only capable of being granted by positive statutes and special provisions of the legislature (2). The Roman law adjudged, that if one man wrote any thing on the paper or parchment of another, the writing should belong to the owner of the black materials (3), meaning thereby the mechanical operation of writing, for which it directed the scribe to receive a satisfaction; for in works of genius and invention, as in painting on another man's canvas, the same law gave the canvas

(1) 2 Bla. Com. 405. Locke on Government, part 2. ch. 5. Barbeyrac, Titius, &c. 3 Bla. Com. 8.

(2) 2 Bla. C. 406.

(3) Inst. 2. s. 33. 2 Bla. Com. 404, 406, 407.

to the painter (1). As to any other property in the works of the understanding the law is silent, though the sale of literary copies, for the purposes of recital or multiplication, is certainly as ancient as the times of Terence (2), Martial (3), and Statius (4). Nor in England has there been, till of late years, any final decision on the right of authors at common law. Whether the productions of the mind could communicate a right of property or of exclusive enjoyment in reason and nature; and, if such a moral right existed, whether it was recognized and supported by the common law of England, and whether the common law was intended to be restrained by the statute of Queen Anne, are questions on which the learning and talents of the highest legal talents in this kingdom, have been powerfully and zealously exerted. These questions were finally so determined that an author has no right at present beyond the limits fixed by the statutes of Anne and 54 G. 3. c. 156. (5) Eight of the judges were of opinion that the copyright of an author was a right allowed by the common law of England, but six held that if it so existed by the common law, the enjoyment of it was abridged by the statute of Anne, and that all remedy for its violation was taken away after the expiration of the terms specified in the act: agreeable to which opinion was the final judgment of the Lords. Before the union of Great Britain and Ireland, in 1801, no statute existed to protect copyright in the latter country; but now, by the 41 G. 3. (6), provisions similar to those of the statute of Anne, were re-enacted and extended to the whole of the united kingdom. These provisions are also inforced by additional remedies and increased penalties, and an action on the case for damages is specifically given to the party injured (7).

Whatever inherent copyright may be supposed to have existed at common law, the definite period of 14 years, with the contingency of another 14 years, if the author was then living, which was given by the Ann. c. 19. as amended by 15 G. 3. c. 53. and extended to Ireland by 41 G. 3 c. 107., is now extended to a 28 years certain copyright in his work, and for the residue

(1) Inst. 2. s. 34.

(2) Prol. in Eunuch, 20.

(3) Epigr. i. 67. iv. 72. xiii. 3. xiv. 194.

(4) Juv. vii. 83.

(5) 2 Bla. C. 407. 15th ed. Christian, note 5.; and see Millar v. Taylor, 4 Burr. 2383. sed qu. This seems only decided in Donaldson v. Becket, 4 Burr. 2408. 7 Bro. P. C. 88. See 5 T. R. 245.

(6) 41 G. 3. U. K. c. 107.

(7) 2 Bla. Com. 407. 15th ed. Christian, note 5.

of his natural life, if he be then living by the 54 G. 3. (1) The 8th section of the last act declares it to be reasonable that authors of books already published, and now living, should also have the benefit of the *extension* of copyright, and then provides for the vesting in the author, if living, the sole publication for another 14 years of any book not published 14 years at the time of passing the act; and, if dying before the expiration thereof, to his representatives. The 9th section provides that authors of books already published and living at the end of 28 years after the first publication thereof, shall have the sole right of property for the rest of his life. This 9th section is to be construed in *pari materiâ* with the 8th (2). Therefore, the EXTENSION of copyright, mentioned in the 8th section, only applies to such copyrights as were existing at the passing of the act, and an author whose works had been published more than 28 years before the passing the act, and whose right was then consequently expired, is not entitled to the copyright for life under either of these sections. (3)

Musical compositions have been held to be within the meaning and protection of the statute of Anne (4). This rule extends to single sheets of music (5), and is not varied by the circumstance of the author's having sold many copies of it in manuscript before publication in print, though the action was brought upon the late act, which has so considerably extended the duration of copyright (6). The same protection is afforded, though the tune in question was bound up with others, and did not fill both sides of a sheet (7), and the composer's interest is not affected by shewing that the song was composed to be sung by a particular performer at the opera, and that by the regulations of that establishment, such compositions become the property of the house (8). So evidence in an action for pirating a musical work that plaintiff acquiesced in the defendant's publication of it six years ago, was held not sufficient to prove the transfer of the copy-

(1) 54 G. 3. c. 156. s. 4.
(2) 1 Bar. & Ald. 462, 463.
(3) Brooke v. Clarke and others, 1 Bar. & Ald. 396.
(4) Bach v. Longman, et al. Cowper, Rep. 623.
(5) Clementi v. Goulding, 11 East, 244. 2 Campb. 25. S. C. Storace v. Longman, cited id. 26. Hume v Dale, cited id. 27.
(6) White v. Geroch, 2 Bar. & Ald. Rep. 298. 1 Chitt. Rep. 24. S. C.
(7) Id. ibid.
(8) Storace v. Longman, 2 Camp. 27.

right by the plaintiff (1); and a receipt for the price of it given by plaintiff, will not preclude the action. (2)

The principle of the decisions on the 8th Anne, will apply to the enactments which have extended the period of an author's monopoly. It has been held, that where an author transfers all his right or interest in publication, upon his surviving the first 14 years, the second term will result to his assignee and not to himself (3). It was held in a late case, that the assignment of copyright of the words of a song, must be in writing to entitle the assignee to an action on the case for pirating it (4). The act renders the written licence of the author and proprietor necessary to legalize the sale of the work in the British dominions. A fair and *bonâ fide* abridgement of any book is considered a new work; and, however it may injure the sale of the original, yet it is not deemed in law to be a piracy or violation of the author's copyright (5). No one but the author or his assignee has a right to print or publish notes, or additions to an old work (6). An injunction was granted to restrain the printing of Milton's Paradise Lost, with Dr. Newton's notes, although any person had the liberty of publishing the original work without the notes (7). But, where the plaintiff published a book of roads of Great Britain, comprising Patterson's Road Book, to the copyright of which the plaintiff was entitled, with improvements and additions, obtained by actual survey and otherwise, an injunction to restrain a publication of an edition of Patterson, comprising the plaintiff's improvements and additions, was refused (8). In such productions as history, chronology, dictionaries, &c., it must be left to the jury to determine whether the publication complained of is a servile copy and imitation, or an original work upon the same subject; and no action lies for publishing sea-charts, on an improved and more useful principle, with material corrections, though many of the lines were copied from old charts (9). But an action lies for a *servile imitation of*

(1) Latour v. Bland, 2 Stark. 382. And see Power v. Walker, 3 M. & S. 7.
(2) Id. ibid.
(3) Cas. Chanc. 2 Bro. 80.
(4) Power v. Walker, 3 M. & S. 7. 4 Campb. 8. S. C. See ex parte Koops, 1 Ves. 465. 3 B. & P. 465.
(5) 1 Bro. 451, 2 Atk. 141.
(6) Cary v. Longman and Rees, 1 East, 358.
(7) 1 East, 361. 2 Bla. Com. 15th ed. by Christian, note 6.
(8) Cary v. Faden, 5 Ves. J. 24. sed qu. 2 Bla. Com. 15th ed. 407. note 6.
(9) In Sayre v. Moore, cited 1 East, 361. note.

*parts of a book* of chronology, though other parts of the book were different (1). Evidence that mistakes in the names of places in a topographical work, have been retained in a subsequent publication by the defendant, is not sufficient to support a count for printing and pirating the plaintiff's work generally (2), but that evidence would sustain a count for transcribing particular parts, without the plaintiff's consent (3). It is lawful to adopt the works of a contemporary writer, by incorporating them in another work, provided it be done *boná fide*, and not with a view to steal the original copyright (4); but it was held otherwise, where so much was copied as to form a substitute for the original work (5). It seems that the author of a libellous or immoral publication can have no remedy at law or equity for the republication or sale by others; for courts of justice will enforce no claim founded on public breach of the law (6); and a court of law will advise the jury to give no damages, for the piracy of a grossly libellous or immoral fugitive piece, though still held to be a book within the meaning of the statutes (7), and an injunction against an invasion of copyright, depending on effect of an agreement, was refused till recovery in an action (8). The representation of a dramatic performance upon the stage is not a publication for which the author can maintain an action as for an invasion of his right (9). This case was decided on the principle, that repeating any thing from memory, could never be a publication within the statute, and was not to be left to the jury as evidence of pirating the work itself. But it has been held, that no one has a right to take down a play in short hand, and to print it, before publication by the author. (10)

Printing Trials, &c. and injunctions when granted.

It hath been very usual for the courts of justice, particularly on state trials, courts martial, &c. &c., to prohibit the publication of the trial till after its conclusion. Thus, upon the termination of Lord Melville's impeachment, the House of Lords made their usual order that the Lord Chancellor should

(1) Trusler v. Murray, 1 East. Rep. 363. n.
(2) Cary v. Kearsley, 4 Esp. 168.
(3) Id. ibid.
(4) Id. ibid.
(5) Roworth v. Wilkes, 1 Campb. 94.
(6) Walcot v. Walker, 7 Ves. jun. 1. And see Lord Byron's Don Juan, 1819, as founded on 2 Campb. 30. note.
(7) 2 Campb. 30. note.
(8) Walcot v. Walker, 7 Ves. jun. 1.
(9) Coleman v. Wathen, 5 T. R. 245.
(10) Ambler, 694.

give orders for the publication of the trial, and that no other person but his appointee should publish the same. The Chancellor appointed Mr. Gurney, who filed a bill and moved for an injunction against Mr. Longman, who had also published it. After having the subject fully argued with respect to the Lords' authority to make such order, the Chancellor granted an injunction till the hearing of the cause, but without pledging his further judgment on the case, which was afterwards compromised. (1)

Works alleged to be piracies are referred to the master for examination (2). An injunction was granted against a colourable abridgement of the term reports in the king's bench amongst other law reports, until answer or further order on certificate of the bill filed (3). On an answer to a bill by the universities of Oxford and Cambridge, where the king's printer did not join, but being made a defendant, an injunction restraining the sale in England of prayer-books, bibles, &c. printed by the king's printer in Scotland, was continued to the hearing (4). An injunction hath been granted to restrain publication of a magazine, as a continuation of the plaintiff's magazine in numbers, and as to communications from correspondents received by the defendant, whilst publishing for the plaintiff; not preventing the publication of an original work of the same nature under a similar title (5). So, though a copyright cannot subsist in an East India Calendar as a general subject, any more than in a map, chart, series of chronology, &c. it may in the individual work; and where it can be traced, that another work on the same subject is not an original compilation, but a mere copy with colourable variations, will be protected by injunction, which in one instance was continued till the hearing without a trial at law (6).

By 41 G. 3. (7) if any book be originally written and published in this country, and be afterwards reprinted abroad, and be imported and exposed to sale here, the importer and seller shall forfeit all such books to be cancelled, and for every offence

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(1) Gurney v. Longman, 13 Ves. jun. 493.

(2) ——— v. Leadbetter, 4 Ves. jun. 681.

(3) Butterworth v. Robinson, 5 Ves. jun. 709.

(4) Universities of Oxon. and Camb. v. Richardson, 6 Ves. 689. See ante, tit. Patents.

(5) Hogg v. Kirby, 8 Ves. jun. 215.

(6) Matthewson v. Stockdale, 12 Ves. jun. 270.

(7) U. K. c. 107. s. 7. founded on 12 G. 2. c. 36. and 34 G. 3. c. 20. s. 57.

shall forfeit also double their value, and £10 with costs. This provision extends to the united kingdom. Two penalties may be incurred in the same day on 12 G. 2. (1) for selling books, the originals of which have been written and published here, and afterwards reprinted abroad, if sales be distinct (2). Under these statutes, it seems immaterial whether the author's copyright is extinct or not, if the book has been reprinted in England within 20 years, these statutes being intended for the encouragement of printing in this country. (3)

Entry at Stationers' Hall.

An injunction may be obtained in a court of equity (4), as well as an action for damages sustained at law for piracy, during the continuance of the author's term, though the publication has not been entered in the register of the stationers' company, and though the author has not prefixed his name to it (5), on the ground that the absolute right to the property of the book is vested in the author during his term, and that the remedy for the penalties is merely cumulative, as not being given to the party grieved but to a common informer (6); and the penalties can only be recovered for a piracy in the two terms of 21 and 14 years, mentioned in the preceding part of the clause enacting the penalties (7); and that enactment does not extend to the second term of 14 years, granted by the 11th section (8). The late statute provides that, in order to ascertain what books shall be published from time to time, the publisher of every book demandable, under the act, shall within one calendar month after the day on which it shall be first sold or offered for sale, within the bills of mortality, or within three months, if in any other part of the united kingdom, enter the title to the copy of every such book, and the name or names and place of abode of the publisher, in the register book of the company of stationers in London, in such manner as has been usual with respect to books, the title of which has heretofore been entered in such register book, and deliver one copy, on the best paper, for the use of the British Museum; which register-book is to be kept at all times at the

(1) 12 G. 2. c. 36. s. 1.

(2) Broke v. Milliken, 3 Term. R. 509.

(3) 2 Bla. Com. 15th ed. By Christian 407. note 6.

(4) Tonson v. Clifton, 11 Dec. 1722. Cor. Macclesfield, C. Approved by Lord Mansfield, 1 Bla. Rep. 330. See 6 T. R. 629.

(5) Beckford v. Hood, 7 T. R. 620.

(6) Id. 627.

(7) 8 Ann. c. 19. s 2.

(8) 7 T. R. 625.

hall of the company, for every of which entries the sum of 2*s.*, is to be paid and no more. The register book to be resorted to and inspected at all seasonable times, on payment of 1*s.* to the warehouse-keeper of the company of stationers, who is to give a certificate, if required, on payment of the like sum; and in case such entry of the title of any such book, shall not be duly made by the publisher within the month or the three months, as the case may be, he shall forfeit £5, together with eleven times the price at which the book is sold or advertised, to be recovered, together with full costs of suit, by the person who shall first sue. Provided always, that in the case of magazines, reviews, or other periodical publications, it shall be sufficient to make such entry in the register-book of the company, within one month next after the publication of the first number or volume. The clause then terminates with this proviso, that no failure in making any such entry shall in any manner affect any copyright, but shall only subject the person making default to the penalty under the act. (1)

The regulations respecting this entry, and the remedies and penalties for the infringement of copyright, have been considerably altered by the late act of 54 G. 3. This act provides, that if any person in the British dominions, shall, during the continuance of the exclusive terms, print, reprint, or import any book without the consent of the author or proprietor first obtained in writing; or, knowing the same to be so printed, reprinted, or imported without such consent, shall sell or expose to sale, or have within his possession any such book, without such consent, he shall be liable, first, to an action on the case at the suit of the proprietor of the copyright for damages, to be assessed by a jury, with double costs of suit; secondly, the offender is liable to forfeit every such book, and every sheet thereof, to the proprietor of the copyright on order of any court of record, on motion to the court, and the books are to be damasked or made waste paper of; and, thirdly, he is also liable to forfeit three-pence for every sheet thereof, either printed, printing, or published, or exposed to sale contrary to this act, a moiety whereof goes to the king, and the other to the informer (2). In Scotland the action for damages may be brought in the court of session, and double costs of suit are also given. (3)

(1) 54 G. 3. c. 156. s. 5.
(2) s. 1.
(3) Id. ibid.

University, Rights, &c.

The peculiar rights of the *Universities*, and other learned bodies, to a portion of all literary property will next be considered in the following order, viz. *First*, Their right to copies of all works published in the united kingdoms. *Secondly*, Their peculiar rights to certain copyrights in perpetuity. The first enactment we find of a nature to support the establishment of libraries for the use of the learned bodies, is in the reign of Charles the Second, when three copies were ordered for the two English universities, and the other for the king's library (1). But the clauses of 17 Car. 2. appear to be perpetual as far as relates to the three copies, though it seems from their not being adverted to in statute Ann. that it was not so considered (2). The first foundation for claim by any public library of a gratuitous delivery of new publications, is in a deed of 1610, by which the company of stationers in London, at Sir Thomas Bodley's request, engages to deliver a copy of every book printed by the company, and not before printed, to the university of Oxford (3). The committee of copyrights in 1818, recommended the delivery of copies to be restricted to a single one to the British Museum, and at most, to the four universities of Oxford, Cambridge, Edinburgh and Dublin (4). The next provision is to be found in 8 Ann. which extended the number of copies demandable to nine, viz. one for the royal library (5), two for the libraries of Oxford and Cambridge, four for the libraries of the four Scotch universities, the library of Sion College in London, and the library of the Faculty of Advocates in Edinburgh (6). This enactment was afterwards enforced in 1775 (7), by an express enactment that no person should be subject to the penalties of those acts for pirating books, unless the whole title to the copy of the book was entered at stationers' hall, and the nine copies delivered there for the use of the libraries: and, though the regulations respecting these forms are altered by the late act (8), the decision, in 1812, forcibly evinces the principle on which the courts would still decide on questions of this nature. It was there decided that the fifth section of 8 Ann. c. 19. makes it necessary for the printer

(1) 13 & 14 Car. 2. c. 33. s. 17. Continued, 16 Car. 2. c. 8. 17 Car. 2. c. 4. 1 Jac. 2. c. 17. s. 15. &c. but expired in 1679.

(2) Appendix to 2 Evans' Parliamentary Debates. Report of Committee on Copyrights in session of 1818.

(3) See the Report passim. id. ibid.

(4) Id. ibid.

(5) Now left out, and a copy given to the British Museum, 54 G. 3. c. 156. s. 2.

(6) 8 Ann. c. 19. s. 5.

(7) 15 G. 3. c. 53. s. 6.

(8) 54 G. 3. c. 156. s. 2.

**of a book, composed after the passing of the act, and published for the first time after the composition, which book is printed and published with the consent of the proprietor of the copyright, to deliver a copy on the best paper to the warehouse-keeper of the company of stationers, for the use of the library of the university of Cambridge, notwithstanding the title to the copy of such book, and the consent of the proprietor to the publication, be not entered in the register-book of the said company.** (1)

Two additional copies were given to Trinity College, and the society of the King's Inns in Dublin, by 41 G. 3. (2), which, though formally repealed by 54 G. 3., contains the substance of the latter enactment, and must be noticed here to shew the connexion and gradual progress of right to the copies as it at present stands. The 54 G. 3. (3) repeals so much of the 8 Ann. c. 19. s. 5. and of the 41 G. 3. U. K. c. 107. s. 6. as requires that any copy or copies of any books printed shall be delivered to the warehouse-keeper of the stationers' company for the use of any of the libraries mentioned, or by him for their use, or which imposes any penalty on such printer or warehouse-keeper for not delivering the copies. It then provides (4) that eleven printed copies of the whole of every book, on the paper upon which the largest impression is printed, together with all maps and prints belonging to it, which shall be published since the act, on written demand at publisher's abode, in twelve months after publication, under hand of stationers' company's warehouse-keeper, or the librarian of the British Museum, Sion College, the Bodleian Library at Oxford, the public library at Cambridge, the library of the Faculty of Advocates at Edinburgh, the libraries of the four universities of Scotland, Trinity College library, and that of the King's Inns at Dublin, or so many of them as shall be respectively demanded, shall be delivered by the publisher in one month after such demand in writing as aforesaid to the aforesaid warehouse-keeper for the time being, which he is required to receive at the hall of the company for the use of the library demanding within such twelve months, and must deliver the same in one month after receipt, for the use of the said library; and every *publisher or warehouse-keeper* (5), not observing the directions of this act

(1) University of Cambridge v. Bryer, 16 East, 317. See the principle in 7 Term Rep. 620.
(2) 41 G. 3. c. 107. s. 6.
(3) c. 156. s. 1.
(4) s. 2.
(5) As to the construction of a similar enactment in 8 Ann. c. 19. see 16 East, 320. 330.

therein, forfeits besides the value of the eleven printed copies, the sum of £5 for each copy not delivered or received, with full costs of suit, to be recovered by the person or persons, body politic or corporate, proprietors or managers of the library, for the use whereof such copy ought to have been delivered or received in action of debt, or other proper action, in any court of record in the United Kingdom (1). The copy of every book demanded by the British Museum must be delivered on the best paper on which the work is printed (2); and it seems, that one copy on the best paper must be delivered by the publisher for the use of the Museum without demand in writing, at the time entry thereof is made at Stationers' hall. (3)

The 54 Geo. 3. goes on to enact, that no copies of a second or subsequent edition of any such work so demanded and delivered as aforesaid, shall be demanded, unless it contains additions or alterations which may be printed and delivered separately (4). A delivery by the publisher to librarians at any library, demanding its copy, who must give a receipt, is equivalent to a delivery by the warehouse-keeper (5); and such warehouse-keeper must, every three months at farthest, transmit to such librarians correct lists of all books entered on the books of the company; and on being required so to do by the librarians or other authorized persons, he shall call on the publishers for as many copies as are demanded of them (6). The limitation of actions under this act is fixed at twelve months (7). The universities are entitled to certain copyrights. The *first* mention we find of this right of the universities is in the 13 and 14 Car. 2. (8). This act, passed for the regulation of printing and licensing of books, expressly confirms the power of the chancellor of the two universities to license books to be printed and reprinted within their limits, not meddling with books of common law, or matters of state or government, or with any books, the right of printing which belongs to another person (9). This is further confirmed in a succeeding section. (10)

But the chief foundation of the exclusive property in some copyrights of books exercised by the learned bodies is vested in

(1) s. 2.
(2) s. 3 and 5.
(3) s. 5.
(4) s. 3.
(5) s. 7.
(6) s. 6.
(7) s. 10.
(8) c. 33. s. 3 and 18.
(9) s. 3.
(10) s. 18.

the two English and four Scotch universities, and the colleges of Eton, Westminster, and Winchester, by the 15 G. 3. That act enabled them to hold in perpetuity, and enjoy the sole liberty of printing, at their respective presses, all such books, which, not having been heretofore published or assigned, should at any time thereafter be bequeathed or given by the author thereof, or his representatives, to or in trust for the said universities, or to or in trust for any college or house of learning within them, or in trust for the said four universities in Scotland, or the colleges mentioned, unless the same is only given for a limited term of years (1). Other persons printing, or knowingly selling the same so printed, forfeit the books and sheets to the universities, who shall deface them, and one penny per sheet, half to the king and half to the informer (2); but this exclusive right only lasts while such books are printed at the universities' or colleges' printing-presses, for the sole benefit of them, and any delegating grant, lease, or sale of an exclusive right of printing to other persons, avoids it; but the copyrights to such books may be sold by the universities, &c., as by authors under 8 Ann. (3) A provision for public notice of this exclusive property, and against persons offending through ignorance is then made, by providing that no penalty shall be incurred till after entry made at Stationers' Hall of the title to the copy of all books already bequeathed, or of all future books, in two months after bequest known to the heads of such seats of learning; which entries may be freely inspected, and certificates thereof given by the clerk to the company, at a 6*d.* fee (4). If he refuses, on advertisement made thereof in the Gazette, such university, &c. hath all the benefit of the entry had it been made, and the clerk forfeits £20 to the proprietors of the copyright (5). The general issue may be pleaded, and full costs are given to defendant, where verdict for him or plaintiff is nonsuited, or discontinues action, to be recovered in the usual method of defendants' costs (6); it is also a public act. (7)

There is also a species of prerogative copyright, as it is termed, subsisting at common law in certain books, the sole right of

(1) 15 G. 3. c. 53. s. 1.
(2) s. 2.
(3) s. 3.
(4) s. 4.
(5) s. 4.
(6) s. 7.
(7) s. 8.

printing which is, for various state reasons, vested in the *king or his grantee*(1):—1. As executive magistrate, the crown has the right of promulgating to the people all acts of state and government. This gives the king the exclusive privilege of printing, at his own press, or that of his grantees, all acts of parliament, proclamations and orders of council(2). 2. As supreme head of the church, he hath a right to the publication of all liturgies and books of divine service, &c (3). 3. He is also said to have a right, by purchase, to the copies of such law books, grammars, and other compositions as were compiled or translated at the expence of the crown (4). And upon these two last principles combined, the exclusive right of printing the translation of the bible is founded (5). There are, however, very forcible objections against any prerogative monopoly in bibles *bonâ fide* published with annotations, points, and explanations; and in the case of Grierson (the king's printer at Dublin) v. Jackson, which originated upon an application for an injunction to prevent the defendant from printing an edition of the bible in numbers, with points and notes, Lord Clare asked, if the validity of such a patent as the king's printer enjoyed had ever been established at law? and said, that he did not know that the crown had a right to grant a monopoly of that kind. He further added, "I can conceive the king, as head of the church, may say, that there shall be but one man who shall print bibles and books of common prayer for the use of churches, and for particular purposes, but I cannot conceive that the king has any prerogative to grant a monopoly as to bibles for the instruction of mankind in revealed religion. If ever there was a time which called aloud for the dissemination of religious knowledge it is this; and, therefore, I should with great reluctance decide in favour of such a monopoly as this, which must necessarily confine the circulation of the book. As to very particular purposes, I have no doubt that the patentee has an exclusive right to print bibles and prayer-books; but unless I am bound very strictly I will not determine upon motion, that no man but the king's printer has a right to print such works as these." The crown

(1) Com. Dig. Trade, B.

(2) Bla. Rep. 105. 2 Burr. 661. 2 Bla. Com. 410; and see 5 Bac. Abr. tit. Prærog, F 5. generally. Millar v. Taylor, 4 Burr. 2305. Chitty, jun. on Prærog. 239.

(3) Id. ibid.

(4) 2 Bla. Com. 410. Company of Stationers, Carter, 90.

(5) Id. ibid. 1 Vern. 120. Skin. 234. Cart. 90. 2 Ch. Cas. 67. Com. Dig. Trade, B.

has no prerogative copyright in almanacks (1). A patent for the sole printing of certain prerogative law books does not extend to new books never printed before the patent (2); and after a grant to one company the king cannot grant power to another to print the same books (3). The king does not divest himself of his prerogative copyright by a publication of the work (4). But except in the instances which have been alluded to, in which his majesty possesses a prerogative copyright in a particular work, the king has no controlling power over the act of printing, nor can he restrain the press on account of the subject-matter upon which the author writes, or his mode of treating it. (5)

Prints, &c.

An exclusive property in *prints and engravings* was first given to their inventors or designers, for 14 years only, by 8 G. 2. (6), and was extended by 7 G. 3. (7), to 28 years absolutely, to all who invent the design or make a print from the design or picture of another, with a forfeiture of all their copies, to be destroyed, and 5*s.* for each of them, by all those copying such prints in the mean time. The 17 G. 3. (8) recites the two former acts, and their insufficiency for protecting the artists, and gives a special action on the case for damages by the party injured against the party pirating the work (9). It has been held, that the proprietor of a print, to entitle himself to the benefit of 8 G. 2. c. 13., must engrave and print his name and the day of first publication on it (10), but it is doubted in equity whether the enactment relates to the penalties only, or whether a compliance with it is necessary to maintain the exclusive property, and, if so, whether it should appear on the bill (11). So, the assignee of a print may maintain an action on 17 G. 3. c. 57., against any one pirating it (12), and the plate itself need not be produced in evidence, one of the prints taken from the original plate being sufficient; but it

(1) 2 Bla. Rep. 1004. 21 G. 3. c. 56. s. 10.; and see Lord Erskine's Speech.
(2) Com. Dig. Trade, B. 2 Ca. Ch. 1. 67.
(3) Skin. 234. Com. Dig. Trade, B.
(4) 4 Burr. 2401. 5 Bac. Abr. 598.
(5) 4 Burr. 2332. 2401.
(6) 8 G. 2. c 13.
(7) 7 G. 3. c. 38.
(8) 17 G. 3. c. 57.
(9) 2 Bla. Com. 407. note 7. 7 T. R. 625.
(10) Sayer v. Davey, 3 Buls. 60. 5 T. R. 41.; see 1 Campb. 94 contra.
(11) Harrison v. Hogg, 2 Ves, jun. 323.
(12) Thompson v. Symmonds, 5 T. R. 41.

was doubted whether on such assignment of a plate, the name of the inventor, or his assignee, should appear thereon. (1)

The first act passed for the protection of the artists of *busts, figures,* &c. was the 38 G. 3. c. 71.—It was held on this statute, that to *sell* a pirated cast of a bust was no offence within it, if the piracy has any addition to, or diminution from, the original, and it appeared to be no piracy within it, to make a pirated cast, if it is a perfect fac simile of the original (2). Lord Ellenborough in that case advised an application to the legislature; and in the 54 G. 3., an act was passed to vest the sole right and property of all new and original sculpture, model, copy, cast of human figure, bust, or part of human figure, in drapery or otherwise; or of any animal combined with the human figure, or otherwise; or of matter of invention in sculpture, or alto or basso-relievo, or cast from nature of human figures, or parts thereof, or of any animal or its parts, or any subject containing these matters, whether separate or combined, for 14 years; to be renewed for 14 years, if party be living at end of first term, provided the proprietor's name and date be affixed thereto before publication (3). The property in works published under 38 G. 3. is *extended* (4) for 14 years from their date (5). The making, importing, or selling pirated copies, or imitations of such sculptures, howsoever contrived, is to be remedied by action on the case for damages with double costs of suit (6). A purchase or assignment must be by deed in writing, signed by the proprietor, with two credible witnesses (7). The limitation of actions is fixed at six months. (8) Busts, &c.

Of all the projects set on foot by designing individuals to delude the unwary, none have proved so injurious to commerce as those familiarly known by the name of *Bubbles.* These deceitful enterprizes, by holding out a prospect of sudden wealth, introduce into the minds of the commercial classes a spirit of gambling, and a contempt for the slow profits of regular industry, while their failure involved all, who were even remotely connected with them, in beggary and ruin. II. Of the Protection of Trade from Injuries. First, The Bubble Act.

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(1) Id. ibid.
(2) 38 G. 3. c. 71. Gahagan v. Cooper, 3 Campb. 111.
(3) 54 G. 3. c. 56, s. 1. and 6.
(4) Meaning, 1 Bar. & Ald. 396. 402, 403.
(5) s. 2.
(6) s. 3.
(7) s. 4.
(8) 54 G. 3. c. 56. s. 5.

The most celebrated bubble in English history, was the South Sea scheme, formed in the year 1720, upon the statute 6 G. 1. c. 4., which empowered the company to redeem all or any of the redeemable national debts, and to augment their capital according to such sums as they discharged, and to raise such sums for purchasing annuities, exchanging for ready money new Exchequer bills, as a general court of the company should judge necessary. Acting upon this statute, the machinators of this fraudulent design, published proposals for raising a fund for carying on a trade to the South Sea, and purchasing annuities, &c. paid to the other companies. The advantages of the first scheme were most studiously exaggerated, and the method of raising the money was by shares or subscriptions, to be purchased by the adventurers. By a series of deception, and an unfortunate coincidence of public opinion, which received no check from the failure of Law's Mississipi scheme in France, in 1718, their plans succeeded, and, for the first few months of the popular mania, their £100 shares sold at £800. Hundreds of other schemes, as visionary as their own, rivalled them in absurdity as well as in success, and the whole nation was infected with the passion for gambling in the shares of these different companies, till at length these flattering views were put an end to by the evident impossibility of the accomplishment of the plan. The shares fell rapidly to £150, and the distress which ensued extending to all classes of society, affected even those who had not participated in the schemes. The transactions of this memorable æra are to be found at length in Anderson's History of Commerce. (1)

About this time the statute 6 G. 1. c. 18. was passed, to repress these visionary projects, or, as the act describes them, "extravagant and unwarrantable practices (2)." It recites that it is notorious that several projects have, since June 1718, been publicly contrived and practised in London, and other parts of the king's dominions, which tend to great inconvenience of subjects in their commerce and affairs; and that the contrivers of these schemes, on false pretences of public good, do presume to open books for public subscription, and draw in many unwary persons to subscribe therein, towards raising great sums of money, whereupon the subscribers or claimants under them

(1) And. Comm. A.D. 1720, referred to 14 East, 416.

(2) See Summary of the Act, 9 East, 518, 519.

do pay large proportions thereof, and which mischievous projects relate to several fisheries, and other affairs of importance to the public commerce of the subjects; and whereas in many cases the undertakers or subscribers have presumed to act as if they were corporate bodies, and have pretended to make their shares in stocks transferrable or assignable without any legal authority, &c., and many other unwarrantable practices, too many to enumerate, have been and may hereafter be contrived to the ruin of many subjects. It is then enacted for remedy, that all and every the undertakings and attempts described as aforesaid, and all other public undertakings and attempts tending to the common grievance, prejudice, and inconvenience of the subjects, or great numbers of them, in their trade, commerce, or other lawful affairs, and all public subscriptions, receipts, payments, assignments, transfers, pretended assignments and transfers, and all other matters and things whatsoever for furthering, countenancing, or proceeding in any such undertaking or attempt; and more particularly the acting or presuming to act as a corporate body; the raising or pretending to raise transferrable stock; the transferring or pretending to transfer or assign any share in such stock without legal authority, either by act of parliament, or charter from the crown, to warrant such acting as a body corporate, or to raise such transferable stock, or to tranfer shares therein (1). And all acting or pretending to act under any charter formerly granted from the crown, for particular or special purposes therein expressed, by persons who shall use or endeavour to use the same charters for raising a capital stock, or making transfers or assignments, or pretended transfers or assignments of such stock not intended or designed by such charter to be raised or transferred; and all acting or pretending to act under any obsolete charter, become void or voidable by nonuser or abuser, or for want of making lawful elections which were necessary to continue the corporation, shall for ever be deemed illegal and void, and shall not in anywise be practised or put in execution (2). The act then provides, that all such unlawful undertakings and attempts, so tending to the common grievance, &c. shall be deemed public nuisances, and subject the offenders to the penalties of præmunire in addition to the fines, penalties, and punishments of persons convicted of common and public nuisances (3), with a proviso that

(1) s. 18. 9 East, 517, 518, 519; and dangerous consequences of transferrable shares. id. 521, 5.

(2) 6 G. 1. c. 18. s. 18.

(3) s. 19. and following sections.

nothing in the act shall be construed to prohibit carrying on partnership in trade in the usual and legal manner (1). It has been held that the court have a power to moderate the judgment of præmunire; and a fine with imprisonment was imposed for an unlawful project to trade to the north seas (2). With regard to the offence itself, it seems to be the better opinion that the question, whether a particular association has a tendency in any particular instance to the mischievous consequences mentioned in the act (3), is for the jury to consider, as well as whether the association is beneficial to the public or not (4), and the court of common pleas refused to decide the question, whether the Golden Lane Brewery, which was an association of persons who had opened a subscription for shares, and made them transferrable, were a nuisance within the statute, on a motion to set aside a judgment confessed to them, but said, if the defendant would make a like motion on producing a record of the conviction of the plaintiffs, or their cestui que trusts, on an indictment for a nuisance, the court would then decide on their disposal of the judgment (5). In a late case, where a criminal information was applied for on behalf of a private relator for an offence under the statute, the court of king's bench was of opinion (6), that whether the particular schemes denounced by 6 G. 1. c. 18. s. 18. as *manifestly tending to the common grievance, prejudice, and inconvenience* of great numbers of subjects in their trade, and other affairs, such as raising a great sum by subscription for trading purposes, and making the shares in the joint stock transferrable, were or not in themselves unlawful and prohibited, without reference to the FACT of such tendency in the particular instance, in the opinion of a court and jury. At any rate the inviting of such subscriptions, by holding out false and illegal conditions, such as that the subscribers would not be liable beyond the amount of their respective shares, was to be considered an offence within the act. But as the statute had not been acted upon for a great length of time, and was then sought to be enforced by a private relator, who seemed not to have been deluded by the project, but to have subscribed with a view to the application for a criminal information, the court discharged the the rule without costs, leaving the relator to the ordinary remedy

(1) s. 25.
(2) Rex v. Caywood, Stra. 471. Lord Raym, 1361.
(3) 9 East, 516.
(4) 4 Taunt, 587.
(5) Brown and another v. Halt, 4 Taunt. 587.
(6) Rex v. Dodd, 9 East, 516.

by indictment, or to the attorney-general, to proceed *ex officio*, if deemed advisable for the protection of the public (1). In a later case (2), which came under discussion in the same court, a great number of persons at Birmingham (2500), admitting of an extension to 20,000, covenanted, by a deed of copartnership, to raise a large capital of £20,000, by small subscriptions of £1 for each share, for the purpose of buying corn, grinding it, making bread, and dealing in and distributing flour or bread among the partners, under the name and firm of the Birmingham Flour and Bread Company, and under the management of a committee; and covenanted, that no partner should hold more than twenty shares, unless the same should come to him by marriage, &c., or act of law; and that each member should weekly purchase a certain quantity of bread or flour, not exceeding 1*s.* in value for each share, as the committee should appoint; and that no partner should assign his share, unless the assignee should enter into covenant with the other partners for the performance of all covenants in the original deed; and that the majority of partners, at a public meeting, might make bye-laws to bind the whole; an indictment was preferred against several of the partners, charging them, upon 6 Geo. I. c. 18. s. 18. and 19., as for a public nuisance, with intending to prejudice and aggrieve divers of the king's subjects in their trade and commerce, under false pretences of the public good, by subscribing, collecting, and raising, and also by *making subscriptions* towards raising a large sum for establishing a new and unlawful *undertaking, tending to the common grievance, &c.*, of great numbers of the king's subjects in their trade and commerce, *viz.*, making subscriptions towards raising £20,000, in 20,000 shares, for the purpose of buying corn, and grinding and making it into flour and bread, and dealing in and distributing the same; and also with presuming to act as a corporate body, and pretending to raise a *transferrable* and *assignable* stock for the same purposes,—and the jury having found, specially, that the company was originally, during the high price of provisions, instituted from *laudable motives*, and for the purpose of more regularly supplying the town of B. and the neighbourhood with flour and bread, and that the same was originally, and still is, beneficial to the inhabitants at large, but was then (*i. e.* at the time of finding the special verdict, which did not include the time of

(1) Dodd's Case, 9 East, 516—527.

(2) Rex v. Webb and others, 14 East, 406.

the offence charged in the indictment), prejudicial to the bakers and millers of the town and neighbourhood in their trades,—the court gave judgment for the defendants, considering the case not to be within the stat. 6 Geo. 1. c. 18. s. 19., on which the indictment was framed. The following were the reasons of this decision, *viz.*: 1st, The *fact* of any nuisance was negatived by the special verdict during the time to which the offences charged had relation. 2dly, Though the defendants were found to have raised a large capital by small subscriptions, which was one ingredient of a nuisance mentioned in the act, that is, where referable to undertakings prohibited by the act; and though the shares were made transferrable *to a certain extent, but to a certain extent only,* that is, upon the vendee's entering into similar covenants with the original partners, which may be another ingredient of a nuisance in the act; and though the defendants had assumed certain equivocal *indicia* of a corporation, *i. e.*, the taking a common name (though this was not found by the jury), having a managing committee, general meetings, and a power to make bye-laws: yet all these things being done *for the purpose of buying corn, and making it into flour and bread for the supply of the partners,* which did not, upon the face of it, appear to be a dangerous and mischievous undertaking, tending to the common grievance, &c.; nor was found, in fact, so to be: and not being one of the specific nuisances prohibited by the statute, namely, the acting, or pretending to act, as a body corporate; the raising, or pretending to raise, transferrable stock (even if that be a nuisance, *per se,* within the act, without reference to the nature of the undertaking); the transferring, or pretending to transfer, any shares in such stock without authority by statute; the acting, or pretending to act, under any charter granted for special and different purposes, by persons using such charter for raising or transferring stock, or so acting under any obsolete charter become void or voidable by non-user, abuser, or for want of election; it did not come within the terms and intent of the nuisances created by that statute. (1)

So it was held in Pratt v. Hutchinson (2), that there is no objection upon the statute 6 Geo. 1. c. 18. as for a public nuisance and grievance to articles of agreement, whereby 50 persons agreed to raise 200 shares at £210 each, *by small monthly sub-*

(1) Rex v. Webb and others, 14 East, 406.

(2) 15 East, 510.

*scriptions*, for building houses for each other, every holder paying interest on his shares till paid up, with a stipulation for the members *to employ certain tradesmen only* in the building, with power to each member *to sell his shares, and transfer them* in the books of the society, *provided* that the *purchaser shall be approved* at a meeting thereof, and should, on admission, *become a party to the original articles;* for there is nothing illegal, *per se*, in the general object or in the mode of executing it, nor is such limited power of transferring the shares a raising of transferrable stock within the act.

Where the association is illegal, it becomes so with all its consequences; one of which is, that no action can be maintained on a contract which would have the effect of admitting its existence as a legal society. Thus, where the plaintiff employed the defendant to purchase certain transferrable shares in an unincorporated company, the British ale brewery, who charged and received from the plaintiff £50 a share, instead of the £5 actually paid as a premium, it was held that the action was not sustainable, the company being illegal under the statute 6 Geo. I. c. 18., and the parties in *pari delicto*(1). So an indictment cannot be maintained for a conspiracy to deprive a man of a secretaryship to an unincorporated company with transferrable shares, illegal under the terms of the statute, and to prosecute him for obtaining money under false pretences; for, said Lord Ellenborough, to deprive an individual of an office in an illegal society is no injury; and the illegality of these associations was agreed by all the judges of the king's bench in Dodd's case; and there has been a nonsuit in the common pleas on the same ground. So to collect subscriptions for such a society, though done *bonâ fide*, is so near to obtaining money under false pretences, that the secretary was not indicted without probable cause. (2)

Secondly, Acts against Forestalling, Regrating, and Engrossing.

Of the other offences which are cognizable by the criminal law as affecting public trade, the principal are forestalling, regrating, engrossing, and other crimes of a similar nature, which have the effect of enhancing the price of provisions and other commodities (3). The offence of forestalling the market, which,

(1) Buck v. Buck, 1 Campb. 547.

(2) Rex v. Stratton and others, 1809, 1 Campb. 549.

(3) See as to these laws, Com. Dig. Justices of Peace, B. 38. Bac. Abr. Forestalling. Burn, J. id. 4 Bla. Com. 160.; and as to their

at common law, included also regrating and engrossing (1), means, in its ordinary acceptation, bringing or contracting for any species of provisions or merchandize in the way to market, or dissuading persons from bringing their goods or provisions there (2), or persuading them to enhance the price when there; any of which practices make the market dearer to the fair trader (3). It was punished by several ancient statutes, the most important of which was the 5 & 6 Edw. 6. c. 14.; but that provision, and all others enforcing it, were repealed, together with some regulations of a similar tendency, by the 12 Geo. 3. c. 71., as having in themselves a tendency to prevent a free trade, and enhance the price of provisions, especially to the labouring and manufacturing poor. It is, however, still punishable as a misdemeanor at common law. (4)

*Regrating* is the buying of corn or other dead victual in any market and selling it again in the same market, or within four miles of the place. The existence of this as an offence at common law is, perhaps, not altogether clear; but it enhances the price of the article, as each successive purchaser must have an additional profit. (5)

*Engrossing* is the buying up of a large quantity of corn or other dead victual, with a view to sell it again, by which means an individual of sufficient wealth might engross the whole of any necessary of life within a certain district, and raise the price of

policy, see 2 Smith, W. of N. 321. (who compares them to the suspicions against witchcraft.) 1 East, 165. and see 14 East, 406. 15 Id. 511. As to conspiracies, see infra, and 3 M. & S. 67.; and as to buying corn to sell again, 15 Car. 2. c. 7. 31 Geo. 3. c. 30. s. 2.; and see the discussion in the late case of the King v. Hilbers and Cleasby, Hil. T. 9 Feb. 1818. on a motion for a criminal information for forestalling and raising the price of oil.

(1) Com. Dig. tit. Justice of Peace, B. 38. 40. 3 Inst. 195. Bac. Abr. tit. Forestalling, A. Hawk. P. C. c. 80. s. 1. 51 Hen. 3. stat. 6. sect. 3.

(2) Rex v. Waddington, 1 East, 144.

(3) 4 Bla. Com. 160. Bac. Abr. Forestalling. Hawk. b. 1. c. 18. Jac. Dic. Forestalling. The King v. Waddington, 1 East, 143. 3 Barn. & Ald. 165, 6. per Best, J.; and see as to corn, &c. 15 Car. 2. c. 7. s. 4. 31 Geo. 3. c. 30. s. 2.

(4) See The King v. Rushby, Hil. 40 Geo. 3. 3 Chit. Crim. L. 536. denied, arg., and Judges divided, cites, 31 Hen. 3. st. 6. s. 3. 14 Rich. 2. c. 4. 8 H. 6. c. 5. Illingworth, 102, 103. 137. 145. 148. 156. 177. Godbolt, 131. 2 Brownl. 188. Cro. Car. 231.

(5) 4 Bla. Com. 160.

it at his pleasure (1). This offence exists at the present day; and indeed, when carried to any extent, highly deserves punishment. It is calculated to create an artificial scarcity where none really exists, and to aggravate such a calamity when it does actually happen. The total engrossing of any commodity with intent to sell it at an unreasonable price, is an offence indictable and finable at common law. (2)

With regard to offences of this nature, it seems to be considered, that, independently of legislative provisions, all endeavours to enhance the common price of any merchandize, and all practices which have an apparent tendency thereto, whether by spreading false rumours, or buying things in a market before the accustomed hour, or by any other such like devices, are criminal at common law (3), and punishable by fine and imprisonment (4); and it has been laid down, that if a person buy any merchandize in gross within the realm, and sell the same again in gross, it is an offence indictable at common law as *malus in se;* on the ground that each person through whose hands the commodity passes must have a profit upon it, and the price is naturally enhanced by its passing in the same state through various hands before it arrives at the retail dealer (5). The intent to enhance the price, as it may be collected from the defendant's conduct, is probably to be considered at the present day as the essence of the crime, and should therefore be stated in the indictment (6). Thus the buying of corn with intent to make starch of it, and then to sell it, was held not within the statute (which is declaratory of the common law), because it was not bought to be sold again in the same nature, but to be first altered by a trade or science, and then sold again (7). For the same reason, buying corn in order to make meal of it does not seem within the statute (8), nor buying barley for malting (9); and this was even expressly ex-

(1) 4 Bla. Com. 160. Cro. Car. 231. Hawk. P. C. c. 80. s. 3.

(2) 4 Bla. Com. 160.

(3) Bac. Ab. tit. Forestalling, A. Com. D. Justices of Peace, B. 38. 4 Bla. Com. 160. Burn, J. tit. Forestalling. Williams, J. tit. id. Jac. Dict. tit. id. Dick. J. tit. id. Hawk. b. 1. c. 18. s. 1. 3 Inst. 196. Rex v. Waddington, 1 East, R. 165.

(4) Cro. Car. 231. Hawk. P. C. c. 80. s. 3.

(5) 3 Inst. 196. Hale, P. C. 152. Bac. Ab. tit. Forestalling.

(6) 3 Chitty, Crim. Law, 528. Burn, J. tit. Forestalling, last edit. 2 vol. 440.

(7) Bridg. 5, 6. Hawk. P. C. c. 80. s. 21. Bac. Ab. Forestalling, B. 5 & 6 Ed. 6. c. 14. rep. by 12 Geo. 3.

(8) Moor. 595. pl. 810.

(9) Cro. Car. 231. 3 Inst. 196. Owen, 135, contra.

cepted by the 7th section of the act of Edw. 6. But buying corn and malting it in another's house, being too large a quantity to be malted in the buyer's own house, was held not to be within the benefit of the exception (1). Salt has always been held a victual within these provisions, and the engrossing it is clearly an offence (2); but cherries and such like fruits, which were considered rather as the luxuries than the necessaries of life (3), were held not to be within the act. Hops (4) and malt (5) were formerly regarded, for a similar reason, as not within the protection of these laws; but a different rule is now established; and hops, on account of their extensive usefulness, are considered as a victual or necessary of life, to forestall or engross which is indictable at common law (6). A defendant was recently convicted on two indictments for various offences of this nature, of which the following formed the chief (7): spreading rumours with intent to enhance the price of hops (in the hearing of hop-planters, dealers, and others, that the stock of hops was nearly exhausted, and that there would be a scarcity of hops, &c. with intent to induce them not to bring their hops to market for sale for a long time), and thereby greatly to enhance the price; endeavouring to enhance the price by persuading dealers not to take their hops to market, and to abstain from selling for a long time; engrossing large quantities of hops by buying with intent to sell for an unreasonable profit, and thereby to enhance the price; getting into his hands large quantities, by contracting with various persons for the purchase, with intent to prevent the same from being brought to market, to re-sell at an unreasonable profit, and to enhance the price (8); engrossing hops of divers persons with intent to resell at an unreasonable profit, and thereby enhance the price; engrossing hops then growing by forehand bargains with like intent; buying large quantities of hops of several persons with intent to prevent their being brought to market to resell at an unreasonable profit, and to enhance the price; buying all the growth of hops on certain lands in certain parishes by forehand bargains, with intent to

(1) Owen, 135.

(2) 3 Inst. 195. Hale, P. C. 152. Cro. Car. 231. 1 East, 156.

(3) 3 Inst. 195. Hale, P. C. 152. Cro. Car. 231. Cro. Jac. 214.

(4) Cro. Car. 231.

(5) 3 Inst. 196. Hale, P. C. 152. Cont. Owen, 135. Rol. Rep. 12.

(6) Rex v. Waddington, 1 East, 155.

(7) 1 East, 143.

(8) The King v. Waddington, 1 East, 143.; and as to false rumours, see 3 M. & S. 67. 2 Chalm. Op. 247, &c. and infra.

resell at an unreasonable price, and enhance the price; engrossing, by buying large quantities of persons unknown, with intent to re-sell at an exorbitant profit. The charges were variously stated in the several counts of the indictment (1). An indictment for engrossing great quantities of fish, cheese, and ducks, without specifying the respective quantities of each article engrossed, is bad on demurrer. (2)

Thirdly, Conspiracies to raise Prices of Commodities or Wages.

Combinations, also, among victuallers or artificers, or other persons, to raise the price of provisions, or any commodities, or the rate of labour, are punishable at common law; besides being, in many cases, severely dealt with by particular statutes. In a late case, it was held to be an indictable offence to conspire, on a particular day, by false rumours, to raise the price of the public government funds, with intent to injure the subjects who should purchase on that day; and that the indictment was well enough, without specifying the particular persons who purchased as the persons intended to be injured; and that the public government funds of this kingdom might mean either British or Irish funds, which, since the union, were each a part of the funds of the united kingdom (3). A statute of 28 Geo. 3. c 53. enacts, that any number of persons united in covenants or partnerships, or in any way whatsoever, consisting of more than five persons, for purchasing coals for sale, or making regulations with respect to the manner of carrying on the said trade in coals, shall be deemed an unlawful combination to advance the price of coals, and every person concerned therein shall be liable to an indictment or information (4). And conspiracies among victuallers, &c., to raise the prices of provisions, or the rates of wages, are punishable by statute 2 & 3 Edw. 6. c. 15., with the forfeiture of £10, or twenty days' imprisonment, with an allowance of

(1) The King v. Waddington, 1 East, 166.

(2) The King v. Gilbert, 1 East, 582.

(3) The King v. Berenger, 3 M. & S. 67. "Raising and spreading a story that wool would not be suffered to be exported in such a year, probably by some stock-jobbers in those times, whereby the value of wool was beaten down, though it did not appear the defendants reaped any particular advantage by the deceit, was, on account of its being an injury to trade, punished by indictment; and a confederacy, without further act done, to impoverish the farmers of excise, and lessen the duty, has been held an offence punishable by information." Opin. of Mr. West. 2 Chalm. Opinions, 247, &c.

(4) 28 Geo. 3. c. 53. s. 2.; and see as to bricks, £20 penalty, 17 Geo. 3. c. 42. s. 4., and post, tit. Manufactures.

only bread and water, for the first offence; £20, or the pillory, for the second; and £40 for the third, or else the pillory, loss of one ear, and perpetual infamy. In the same manner, by a constitution of the Emperor Zeno(1), all monopolies and combinations to keep up the price of merchandize, provisions, or workmanship, were prohibited, upon pain of forfeiture of goods and perpetual banishment (2). The statute 39 & 40 Geo. 3. c. 106. provides a summary mode of proceeding, before two justices, with three months' imprisonment, and other penalties, against workmen combining to procure an advance of wages, or to control masters in the conduct of their business; provides a method of referring disputes to arbitration; and awards penalties against masters combining to reduce the rate of wages. The act gives a summary form of conviction, in which the offence is required to be stated; a conviction alleging, generally, that the defendants were concerned in entering into a certain agreement for the purpose of controlling A. B. &c., without stating what the agreement was (even if a departure from the words of the statute, in stating the agreement to be for the purpose of controlling, &c., instead of for controlling, would not, at any rate, have been a fatal variance), was held bad. (3)

Cheats and false Pretences.

The whole class of offences which the law includes under the general terms of cheats and false pretences, may also be considered as affording an especial protection to public trade, the concerns of which imperiously require a strict observance of the rules of honesty and good faith. Of this nature are the common law offences of using false weights and measures(4), of selling goods with counterfeit marks(5), or supplying unwholesome food(6). And in a late case, an indictment was held maintainable against a defendant, who was employed to make bread for the military asylum at Chelsea, which charged, that he delivered to J. H. divers, to wit, 297 loaves, as for good household bread, whereas the said loaves were not good household bread, but contained divers noxious and unwholesome materials not fit for the food of man, without showing what the noxious materials were, or that the defendant intended to injure

(1) Cod. 4. 59. 1.
(2) 4 Bla. Com. 159.
(3) The King v. Nield, 6 East, 417.
(4) 2 Burr. 1125. Cowp. 1324. 3 Chit. Cr. L. 994. Hawk. b. 1. c. 71. and see 4 T. R. 750.
(5) Id. ibid.
(6) 6 East, 133.

the children's health. Mixing alum with bread, in such a manner that crude lumps were found in the bread, was holden to be indictable(1). But, except in these or similar instances, where false tokens are employed, or the crime is injurious to health, a deceitful misrepresentation of the quantity or quality of an article, even in a matter which the law considers material, is not a ground for an indictment, but only for a civil action. An indictment will not lie for a deceitful representation and warranty of the soundness of a horse(2). And, in a late case, an indictment was holden not to be sustainable against a miller for receiving good barley to be ground at his mill, and delivering, instead of the produce of the barley, a mixture of oat and barley meal, which was musty and unwholesome(3). The offence of obtaining property under false pretences may be punished even with seven years' transportation, by the statutes 30 G. 2. c. 24. and 52 G. 3. c. 64. Hither also may be referred that prodigious multitude of statutes which are made to restrain and punish deceits in particular trades, as for instance, among bakers and brewers, and which, in aid of the common law punishment by fine and imprisonment, authorize a summary mode of proceeding for penalties leviable by distress and sale. These laws, which are briefly discussed by writers that treat of the office and duty of justices of the peace, will be mentioned hereafter among the provisions relative to manufactories. The bankrupt laws form an entire system, the object of which is to suppress fraud, and to promote an equal distribution of the property among the creditors of a failing trader.

**Manufactories, when Nuisances.**

The establishment of an offensive trade or manufactory so near a highway, or the dwelling-houses of individuals, as to be destructive of the public health or comfort, is indictable as a common nuisance. An action on the case is also maintainable at the suit of a person who receives special damage from it. And if the trade do not affect the public, but only the private rights of two or three individuals, so as to be merely a private

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(1) The King v. Dixon, 3 M. & S. 11. As to the offence of supplying unwholesome food, see 2 East, P. C. 822. 4 Bla. Com. 162. 6 East, 133 to 141. 4 M. & S. 214. 2 Chit. Cr. L. 556.; and as to delivery of bread of unjust weight, see id. 559, and see infra.

(2) The King v. Pywell, 1 Stark. 402. 1 Salk. 376. Mod Cas. 105.

(3) The King v. Haynes, 4 M. & S. 214.

nuisance, an action on the case is the only remedy (1). A brew-house (2), glass-house (3), dye-house (4), tallow-furnace (5), tan-fatt (6), smelting-house (7), smith's forge (8), lime-kiln (9), and a swine-stye (10), have been holden common nuisances where erected in such places as to be prejudicial to the rights and enjoyments of the public. So it seems that erecting powder-mills, or keeping powder-magazines, near a town, is a nuisance by the common law, for which an indictment or information will lie (11). The same doctrine has been held with regard to the manufacture of the acid spirit of sulphur, vitriol, and aqua fortis, in the neighbourhood of dwelling-houses (12). And a person may be indicted for carrying a child infected with the small-pox along a public highway in which persons are passing, and near to the habitations of the king's subjects (13); or an apothecary for inoculating children with the small-pox, and afterwards, while they are sick of it, unlawfully and injuriously causing them to be carried along a public street (14). It has indeed been holden, on the other hand, for the convenience of trade, that it is no common nuisance for a tallow-chandler to make candles in a town, although the reason of this opinion does not seem to be satisfactory (15). And burning bricks for the purpose of building houses, even near the habitations of men, was, in one instance, holden not to be a nuisance, on account of the object in view (16). Lord Eldon, in a recent case, observed, that what was to be regarded as a nuisance, considered with reference to carrying on a trade, was a question of fact not very easy to be determined. He said he had frequently known verdicts de-

(1) As to this offence in general, see Com. Dig. Action on the Case for a Nuisance, A. C. Indictment, D. Hawk. b. 1. c. 75, Burn, J. Nuisances. Bac. Abr. Nuisances. Rex v. Lloyd, 4 Esp. 200.

(2) 1 Burr. 336. Hawk. 1. c. 75. s. 10. Hutt. 136. Palm. 539., but see 18 Ves. 217.

(3) Hawk. ub. sup.

(4) Hutt. 136.

(5) Tohayle's case, Cro. Car. 510. 3 Mod. 137. 1 Rol. Abr. 1. 41. Bac. Abr. tit. Nuisances, A. seq. quære if defendant a chandler. 1 Rol. Abr. 88. l. 48. 2 Rol. R. 139. l. 2. and infra.

(6) Hutt. 136.

(7) 1 Rol. Abr 89. l. 15.

(8) Lutw. 70.

(9) 9 Co. 59 a. 2 Rol. Abr. 141. l. 5.; but see 18 Ves. 219.

(10) 2 Rol. Abr. 141. l. 13. 9 Co. 59 a.

(11) Rex v. Taylor, 2 Stra. 1167.; and see as to this offence, 12 Geo. 3. c. 61. and infra next chapter.

(12) 1 Burr. 333. 18 Ves. 219, &c.

(13) Rex v. Vautandillo, 4 M. & S. 73.

(14) Rex v. Burnett, 4 M. & S. 272.

(15) Hawk. b. 1. c. 75.; and see Bac. Abr. Nuisances, A.

(16) The Duke of Grafton v. Hilliard, 18 Ves. 219.

ciding manufactories to be no nuisances, by which it could not be denied the comfort of life was destroyed, and health in some degree affected; and he mentioned the instances of a sugar-house and a brew-house, in which such verdicts had been given(1). The carrying on of an offensive trade is not indictable unless it be destructive of the health of the neighbourhood, or render the houses uncomfortable and untenantable(2). And a person cannot be indicted for continuing a noxious trade which has been carried on at the same place for nearly fifty years(3); or for setting up a noxious manufactory in a neighbourhood in which other offensive trades have been long borne with, unless the inconvenience to the public be greatly increased(4). The jurisdiction of a court of equity to proceed by injunction, on an information by the attorney-general, at the relation of individuals, against a nuisance by an offensive and unwholesome process in trade, is not exercised without a trial at law, although the court will regulate, according to justice, as against the relaters, the time of trial of an indictment depending in the king's bench; but it is doubtful whether this power will be exercised against the defendants(5). In London and Westminster, and other large towns, there are special statutory provisions with regard to nuisances, and the method of preventing them by annoyance juries. (6)

Other Encouragements.

The encouragement afforded to trade appears most conspicuously from those admirable systems, so wisely instituted and so carefully preserved by the united assistance of the common law, the legislature, and the courts of justice, upon which mercantile *contracts* depend for their validity and enforcement. I mean, in particular, that part of our commercial code which relates to bills of exchange and promissory notes, and that which regards policies of insurance (7). The same zealous regard for the interests of commerce is also manifest in the laws that regulate the various civil relations of society, in which, for the convenience of trade, the rules that prevail in ordinary cases are,

(1) Dict. per Lord Eldon, 18 Ves. 217, 8.

(2) Rex v. Davey, 5 Esp. 217.

(3) Rex v. Neville, Peake's Rep. 93.

(4) Rex v. Neville, Peake's Rep. 91.

(5) Att. Gen. v. Cleaver, 18 Ves. 211.

(6) Vide 31 Geo. 2. c. 17. 57 Geo. 3. c. xxix. See Hawk. b. 1. c. 75.

(7) These extensive subjects will be treated of in the next volume.

in a variety of instances, relaxed or modified; as, for instance, in the laws relating to landlords and tenants, and to distresses.

Fixtures, &c.

The old rule of law with regard to *fixtures*, or annexations to the freehold, is, that whatever is once annexed to the realty cannot be severed again without the consent of the owner of the freehold (1), and that such severance is waste at common law (2). And in Elwes v. Maw (3), in which every case on the subject of waste was minutely examined, it was held, that a tenant in agriculture, who erected, at his own expence, and for the more necessary and convenient occupation of his farm, a beast-house, carpenter's shop, fuel-house, cart-house, pump-house, and fold-yard-wall, which buildings were of brick and mortar, and tiled, and let into the ground, cannot remove the same, though during his term, and though he thereby left the premises in the same state as when he entered. But this rule, at a very early period, had an exception engrafted upon it in favour of trade, and of those vessels and utensils that are immediately subservient to the purposes of trade. In the year-book, 42 Ed. 3. 6., the right of the tenant to remove a furnace, erected by him during his term, is doubted and adjourned (4). In the year-book of the 20 H. 7. – 13. a. and b., which was the case of trespass against executors for removing a furnace fixed with mortar by their testator, and annexed to the freehold, and which was holden to be wrongfully done by them, it is laid down, "that if a lessee make a furnace for his advantage, or a *dyer* make his *vats* or vessels to 'occupy his occupation' during his term, he may remove them; but if he suffer them to be fixed to the earth after the term, then they belong to the lessor. And so of a *baker*. And it is not waste to remove such things within the term by some, and this shall be against the opinions aforesaid." But the rule in this extent, in favour of tenants, is doubted afterwards in 21 H. 7. 27., and removed there, by allowing that the lessee could only remove within the term things fixed to the ground, and not to the walls of the principal building. However, in process of time, the rule in favour of the right in the tenant to remove utensils, set up in relation to trade, became fully established; and, accordingly, we find Lord Holt, in Poole's case (5), laying down, in the instance of a *soap-boiler*,

(1) 3 East, 40 and 38.
(2) Id. cases cited, page 40.
(3) 3 East, 38.
(4) Poole's case, Salk. 368.
(5) Salk. 368.

an under-tenant (whose vats, coppers, &c., fixed, had been taken in execution, and on which account the first lessee had brought an action against the sheriff), that, during the term, the soap-boiler might well remove the vats he set up in relation to trade, and that he might do it by the common law, and not by virtue of any special custom in favour of trade and to encourage industry; but that after the term they became a gift in law to the owner of the reversion, and were not removable. He adds, that there was a difference between what the soap-boiler did to carry on his trade, and what he did to complete his house, as hearths and chimney-pieces, which he held not removable. The indulgence in favour of the tenant for years during the term, has been since carried still farther, and he has been allowed to carry away matters of ornament, as ornamental marble chimney-pieces, pier-glasses, hangings, wainscots fixed only by screws, and the like(1). And a fire-engine in a colliery, being accessory to the trade of carrying on coals, and a cider-mill, as connected with the trade of making cider, appear to be removable by the tenant, although they savour of the realty on account of the privilege of trade(2). The same privilege has been extended to hot-houses and green-houses erected, and trees planted, by a nurseryman, for the benefit of his trade; but not to erections made by a farmer, or person not in trade, for agricultural purposes, or for the better enjoyment of the land demised (3). In a late case, where certain parts of a machine had been put up by the tenant during his term, and were capable of being removed without injury to the other parts of the machine, or to the building, and had been merely valued between the out-going and in-coming tenant, it was held that trover would lie by the out-going tenant for them as his property (4). And, by special custom, an article, which would otherwise be classed as a fixture, may be a chattel, as a granary built on pillars in Hampshire(5), which belongs to the executor, and not to the heir. But, in general, if the subject be not capable of removal without injury to the freehold, as, if a furnace is so affixed to the wall of a house as to be essential to

(1) 1 P. Wms. 94. 1 Atk. 477. 3 Atk. 13. 3 East, 53, 4.

(2) 3 East, 53.

(3) Penton v. Robert, 2 East, 89. Elwes v. Maw, 3 East, 38. 54, 55, 56. Dean v. Allhalley, 3 Esp. C. N. P. 11. and 3 East, 47. 4 Taunt. 317. 7 Taunt. 191.

(4) Daoies and another v. Jones and another, 2 Barn. & Ald. Rep. 165.

(5) Tol. Exec. 200. 11 Vin. Abr. 154. 2 Bla. Com. 428.

its support, it is not removable by the executor (1). A tenant covenanting to repair the premises, and to yield them up, with all improvements, at the end of the term, cannot remove a veranda fixed to the ground by posts (2). So a building of wood, erected by a tenant on a brick foundation, for the purpose of carrying on the *trade* of making varnish, was held removable, even after the expiration of the term, the tenant having wrongfully continued in possession; and having suffered judgment by default to that part of the declaration which charged an unlawful trespass and entry on the premises (3). The price of fixtures cannot be recovered under a count for goods sold and delivered (4); nor do they pass to the assignees of a bankrupt under the words "*goods and chattels*," in 21 Jac. 1. c. 19. s. 10. and 11. (5) Fixtures are also considered as so far savouring of the realty, that a lease in writing, containing a contract for purchase of goods and *fixtures*, &c., cannot be given in evidence to prove a sale of goods, unless it has a lease stamp, and an agreement stamp is not sufficient. (6)

Privilege from Distress.

Articles delivered to a person exercising a trade or employment, to be carried, wrought, or manufactured in the way of his trade, are not distrainable; as for instance, cloth delivered to a tailor. So a horse standing in a smith's shop for the purpose of being shod, or in a common inn, or sacks of corn sent to a mill or a market are privileged (7). But the privilege of a common inn does not extend to a livery stable; and therefore it seems that a carriage standing at livery may be distrained (8). Implements of trade, as stocking-frames or looms, may be distrained, provided they are not in actual use, and there is no sufficient distress besides. (9)

(1) Tol. 199.

(2) Admin. of Penry v. Brown, 2 Stark. 403.; but see Naylor v. Collinge, 1 Taunt. 19.

(3) Penton v. Robart, 2 East, 88. 4 Esp. 33. S. C.

(4) Lee v. Resdon, 7 Taunt. 191. 2 Marshall, 495. S. C.

(5) Horn, executrix, &c. v. Baker and others, assignees, &c. 9 East, 215.

(6) Corder v. Drakeford, 3 Taunt. Rep. 382. Peake, 128. 1 Campb. 387.

(7) 1 Inst. 47 a. See also 1 Salk. 249, 250. Cro. El. 549. 596. 3 Leo. 261.

(8) Francis v. Wyatt, 3 Burr. 1498.

(9) Gorton v. Falkner, 4 T. R. 565.

## CHAP. XIII.

### *The Law affecting Manufactures.*

General Utility of Manufactures (1)

THE important rank which the *manufactures* of this country have long attained in the estimation of the world, and their manifest utility in furnishing employment and support for a great part of our population, and in supplying the comforts and conveniences of life, have been often the subjects of just and well-merited commendation (1). It is evident, on taking a comparative view of our present and former condition, that the improvement of the manufactures has always accompanied the progress of the national opulence. Wool, the staple commodity of this country, which now employs so large a portion of our manufacturing skill, was in former times sent abroad, and returned to England in a manufactured state. Germany furnished our ancestors with hardware; at present the hardware of Sheffield and Birmingham has an unrivalled market in various parts of Europe, Asia, and America. For the looking-glasses, papers, and silks of France, for the carpets of Turkey, for the porcelain and wares of China, for the clocks and watches of Germany, and the glass of Italy, our workmen can substitute such productions as are little if at all inferior in materials or execution, in elegance of design, or cheapness. The superiority of our manufactures, in a national point of view, over other objects of trading speculation is equally certain, whether the materials are produced at home or imported into this country from abroad; but, in the former case, they are more profitable than in the latter; for then the whole labour employed for their cultivation, manufacture, and exportation is divided among people of our own nation, and they exclusively share all the

(1) See the utility of manufactures partially considered, ante, 1 vol. 9 to 18.

profits. Thus in the instance of wool, to which we have already referred, this article is made into broad cloth, which, before it reaches the consumer, undergoes a great variety of operations, and passes through a hundred different hands, so that there is no produce whatever, the benefits of which can be more widely diffused among the industrious part of the community. Suppose the value of English wool produced in one year to amount to three millions, the expence of working it up into various articles to be nine, its total value when manufactured will amount to twelve. Suppose the annual exportation from this country to amount to three millions, and the number of persons maintained by the manufacture to be a million, let it be considered that these persons expend what they earn in all the necessaries of life, and that the procuring of such necessaries is a source of employment and profit to the other members of the community, and then we may judge what an immense addition is made to the natural stock of industry and gain by this valuable article, even without taking into the account the sailors employed to export the various articles into which it is wrought, and the artificers of machines used to accelerate many parts of the manufactures. So, next in point of importance to manufactures which are produced from materials raised in this country, may be ranked those which are composed of raw materials imported into England from other nations, and are either reserved for domestic use, or exported for foreign consumption. The advantages of these are, that they preclude the necessity of foreign manufactures, prevent the balance of trade from inclining against us, and secure those profits which must necessarily arise from the manufacture passing entirely through the hands of our countrymen. A short recital of some of these articles selected from a large number may be useful. *Cotton*, the produce of the East and West Indies, is manufactured into candle-wicks, stockings, cottons, dimities, fustians, calicoes, muslins, and all kinds of Manchester goods, many of which are sent to the markets in the Baltic and in North America. *Hemp*, brought from the north of Europe, is made into all kinds of sacking, cloth, sails, cordage, cables, and rigging for ships. *Raw Silk*, brought from Italy, the East Indies, and China, is dyed, spun, and thrown, and then woven into pieces of broad or narrow silks, stockings, ribbons, fringes, &c. From the *cork* tree of Portugal, the inner rind is scaled off, in order to stow pipes of wine in our ships. This article is cut into corks of all sizes, which are exported in great quantities. With the *rushes* of the Dutch marshes, planted and attended as

as the English might be, were our poor as industrious as the people of Holland, our casks and buckets are made water-proof. *Linen*, purchased in the degraded form of old rags, is made into various kinds of stationary, and re-sold to foreigners. So attentive is commerce to every article, even the most worthless in appearance, which can contribute to the use of man. But of all the raw materials imported, no one is convertible to so many uses as iron: much is brought from Sweden. After giving employment to numerous trades, it re-appears in nautical instruments, ships' stoves and anchors, cannon, guns, bands, ramrods, chains, crows, nails, rivets, hoops, hammers, gates, saws, sickles, scythes, screws, fire-grates, fire-irons, and various other articles familiar to the observation of the reader. When it is converted into steel, it assumes the polished forms of swords, razors, knives, scissors, needles, buttons, surgeons' instruments, locks and keys, watch-chains, springs, &c. The price of these, almost entirely arising from the labour and skill employed upon them, is immense, when compared with that of the unwrought material. (1)

From this brief sketch of the utility of our manufactures, the propriety of a full and distinct consideration of the subject will be manifest. As we proceed, we shall find the manufactures regulated, in their different stages, by the most wholesome provisions for securing the good quality and proper weight of the article, and the sale of it to the public at a fair price and in good marketable condition. On the other hand, reciprocal benefits are secured to the manufacturers themselves, by particular enactments with reference to the servants employed in the manufactories, and others of a highly penal nature to protect their property from depredations and violence from without. The laws with regard to importation and exportation, and to the excise duties, have been already noticed in a former volume. The other provisions, therefore, with reference to the objects of mechanical and manufacturing skill, will chiefly claim attention here, and will be distributed in alphabetical order.

(1) See as to the manufactures in general, Smith's Wealth of Nations, Index, tit. Manuf. Anderson's Hist. Comm. Macpherson's Hist. Com. Tucker on Trade, 14. 30, 31. 34. 36, 37. 43. 47, 52, 3. 57. 67. 88, 9. 133. 146. Colquhoun, 422. Sir J. Child. Maylyre, 161. and Kett's Elements. Rees's Encyclopædia. Encyclop. Britan.

BREAD.

The provisions which regulate the making of *bread*, may be considered as they relate to places "in the city of London and within the bills of mortality, or within ten miles of the royal exchange," or to parts not within these limits. We shall consider the law in each of these divisions, with regard, 1st, to the price; 2d, the ingredients; 3d, the weight; 4th, the time and mode of sale; 5th, the tribunals to which offences are to be referred.

Within Bills of Mortality. 1. Price.

2. Materials.

The assize of bread, or ordinance regulating its *price*, has been abolished within the bills of mortality by the late act, 55 Geo. 3. c. 99., which repealed former statutes and usages in this respect (1). And any person may bake or sell bread made of flour, or meal of wheat, barley, rye, oats, buck-wheat, Indian corn, pease, beans, rice, and every other kind of grain whatsoever, and potatoes; and with any common salt, pure water, eggs, milk, yeast, barm, leaven, and potatoe yeast; and mixed in such proportions as may be thought fit (2). But no person making for sale can lawfully mix alum or other unwholesome matter, under a penalty, against every master or journeyman knowingly offending, of £20, or six months' imprisonment, at the discretion of the magistrate, who may also direct the name of the offender to be published in a newspaper (3). And a baker, who delivers bread containing pernicious ingredients and unwholesome materials, or even alum in a shape which renders it noxious, is liable to be indicted at common law, although the alum is mixed by his servant in an unusual quantity; for as the legislature has prohibited the use of alum, it must be taken to be a dangerous article; and every person who allows it to be used in his trade will be liable, unless he take due caution to prevent its being improperly employed: indeed, although a small quantity of alum may be swallowed without injury, yet if taken in larger quantities, it deranges the stomach, and occasions constipation of the bowels; its tendency is injurious to health; and it is unfit for the food of man (4). The adulteration of corn, meal, or flour, for sale, subjects the offender to a pe-

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(1) 55 Geo. 3. c. 99. loc. & pers. s. 2. & 25. N. B. This act was amended by 59 Geo. 3. c. 127.

(2) 55 Geo. 3. c. 99. s. 2. & 25. loc. & pers.

(3) 55 Geo. 3. c. 99. s. 3.

(4) Rex v. Dixon, 3 M & S. 11. 4 Campb. 12. S. C. Rex v. Treeve, 2 East, P. C. 821. N.B. By 55 Geo. 3. c. 99. s. 24. offenders prosecuted under that act are not liable to any other law.

cuniary penalty of £5(1). To prevent the spurious substitution of one article for another, a loaf made of the meal of any other grain than wheat, is required to be marked with a large Roman M, under a penalty of £20(2). Justices, and peace officers under their warrants, may enter in the day-time into the premises of any miller, mealman, or baker, and take to their assistance other master millers or bakers, and search for adulterous articles; and if adjudged to be such, they may be disposed of as the magistrates think fit (3). The offender is also liable to a £20 penalty, or six months' imprisonment, and to have his name published in a newspaper, with the offence of which he has been guilty(4). Obstructing such search or seizure exposes the offender to a £10 penalty; and if a baker make it appear that an offence, for which he has paid the penalty, has been occasioned by the wilful default of a servant, the magistrate may order the servant to pay a sum of money by way of recompence, and, on default, commit him for six months. (5) BREAD.

3. Weight.

Bread made for sale, of whatever quality, is required to be of the following weight, avoirdupois, *viz.*: the peck loaf, 17 lbs. 6 oz.; the half-peck, 8 lbs. 11 oz.; the quarter, 4 lbs. 5½ oz.; the half-quarter, 2 lbs. 2¾ oz.; the pound loaf, 16 oz. Every seller of bread is required to have fixed, in some convenient place in his shop, a beam and scales, with proper weights; and a person purchasing, may, if he think proper, require it to be weighed in his presence(6). A baker neglecting to fix such beam and scales in some convenient part of his shop, or to provide and keep for use proper weights, or keeping deficient weights, or refusing to weigh bread purchased in his shop, in the presence of the parties requiring it, is liable to a penalty of 40*s.* (7) The offence of selling bread deficient in weight exposes the offender to a penalty of 10*s.* for every ounce deficient, and so in proportion for a less quantity; but the seller is not liable for this deficiency, unless the bread be weighed and the fault discovered within twenty-four hours after it has been baked. And French or fancy bread or rolls are not under any restriction. (8)

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(1) 55 Geo. 3. c. 99. s. 5.
(2) 55 Geo. 3. c. 99. s. 5.
(3) 55 Geo. 3. c. 99. s. 6.
(4) 55 Geo. 3. c. 99. s. 6.
(5) 55 Geo. 3. c. 99. s. 8.
(6) 55 Geo. 3. c. 99. s. 9.
(7) 55 Geo. 3. c. 99. s. 10.
(8) 55 Geo. 3. c. 99. s. 11.

BREAD.

4. Time and Mode of Sale.

No person employed in the business of a baker, within these limits, is at liberty, on the Lord's day, to make bread, rolls, or cakes of any kind; nor to expose them to sale on any part of the day, except between nine in the forenoon and two in the afternoon; nor to bake or deliver meat or victuals (except a master or mistress baker residing within these limits, who is allowed to deliver to customers, on the Lord's day, any bakings until half-past two in the afternoon); nor to be engaged in the business in any other manner, except so far as may be necessary in setting and superintending the sponge, to prepare the bread or dough for the next day's baking: a person offending against these regulations, and being convicted on the view of a justice, on confession or proof, is liable to pay, for the first offence, 10*s.*; for the second, 20*s.*; and for the third, 40*s.*; with the costs of the prosecution: such costs, together with such part of the penalty as the justice may think proper, to be allowed to the prosecutor for loss of time, at the rate of 3*s.* a-day; and the residue of the penalty to be paid to the justice, and, within seven days after his receipt, to be transmitted to the churchwardens or overseers of the poor;—if not paid within fourteen days, to be levied by distress, or, in default, the offender to be imprisoned (1). It has been determined, that an offender cannot be convicted in more than one penalty on the same day, under the stat. 29 Car. 2. c. 7., for exercising his ordinary calling on a Sunday (2).

5. Penalties and Indemnities.

No person concerned in the business of a mealman or baker can act as a justice of the peace, under the 55 Geo. 3. c. 99.; the penalty for so doing is £50, to be recovered by action of debt (3). To provide for the easy prosecution of persons offending against the provisions of the statute, it is declared, that it shall be lawful for the lord mayor, or an alderman, or any other magistrate within his jurisdiction, to hear and determine offences in a summary way; to summon the accused; and if he do not appear, or excuse himself, to issue a warrant, after oath made by a credible witness: and, in case of appearance, or default after notice, or non-apprehension on the warrant, the magistrate

(1) 55 Geo. 3. c. 99. s. 12. See the decision on the old acts, 2 Burr. 785. 1125. 5 T. R. 449. 3 Burr. 1859., and see 59 Geo. 3. c. 36. s. 11. post.

(2) Crepps v. Durden, 2 Cowp. 640.

(3) 55 Geo. 3. c. 99. loc. & pers. s. 13.

will proceed with the case; for want of distress to levy penalty, the offender may be imprisoned for one calendar month (1). A form of conviction is given by the act, which is not removable by certiorari; an appeal lies to the sessions, and costs may be given against the failing party (2). No conviction can take place for an offence under the act, unless the information be exhibited within fourteen days, except in cases of perjury; and no person convicted under the act is liable to be prosecuted under any other law (3). Where an action is brought against a magistrate or peace officer, for any thing done under the act, it must be commenced within six months, and brought in the proper county, and the provisions of the 24 Geo. 2. c. 44. must be complied with (4); there must be seven days' notice of action; the defendant may tender amends, and having judgment in his favour, or being discharged by a nonsuit, &c., is entitled to costs; if the verdict be the other way, the plaintiff is entitled to damages and costs (5). The general issue may be pleaded, and treble costs recovered, if the suit end favourably to the defendant (6). The act declares, that it shall not prejudice or affect the rights or privileges of the city of London, or of the company of bakers of that city, or of the wardmote inquests of that city; or of the city or liberties of Westminster, or borough of Southwark; or any right or custom of leets, or the rights of any clerk of the market, exercisable by virtue of any charters, prescriptions, grants, or acts of parliament, (except so far as relates to the assize of bread, and the regulations of the price and weight thereof) (7). In the construction of a grant, by letters patent, from the crown to the masters and wardens of the corporation of bakers (there being four wardens), of full power, by themselves or their deputies, to overlook and correct the trade of baking, it was held, that the master and one warden could not justify entering the house of a baker to overlook bread; for if they acted as principals, they did not amount to a majority of the persons to whom the power was entrusted; and if they acted

BREAD.

(1) 55 Geo. 3. c. 99. s. 14.
(2) 55 Geo. 3. c. 99. s. 19.
(3) 55 Geo. 3. c. 99. s. 24.
(4) The reason why the 24 Geo. 2. is particularly mentioned in these acts seems to be that some aldermen and other persons, who may not be justices of the peace, are empowered to act under 55 Geo. 3. and 31 G. 2. c. 29. s. 34.; and so of meal-weighers, clerks of market, &c.
(5) 55 Geo. 3. c. 99. s. 21.
(6) 55 Geo. 3. c. 99. s. 22.
(7) 55 Geo. 3. c. 99. s. 25.

BREAD.

as deputies, it should have appeared that they were appointed by the majority. (1)

Bread, in Parts without the Bills of Mortality.

The assize has not been abolished in parts of the kingdom without the bills of mortality. The general provisions are therefore twofold; some respecting places where an assize is set, and others where there is no assize. The statute 31 Geo. 2. c. 29. repealed all the former laws relating to the assize of bread, and re-enacted the same with additions and amendments (2). Of this statute it is observed in Burn's Justice, that it is "throughout the whole a very regular and judicious act; so that the author had nothing more to do (says the book) than to abridge the same in the order in which it stands, — not being able in point of method to alter it for the better (2)." The provisions of this statute, however, (which, in s. 2. empowers the setting of the assize, in s. 5. directs that it shall be in avoirdupois weight; in s. 7. and 8. directs how the prices of grain shall be certified as well in cities and towns corporate, as within counties at large; in s. 9. directs that bakers shall inspect the returns made and entered; and in s. 10. prohibits any fee from being taken from bakers,) in respect of the assize, have been much altered by subsequent acts of Parliament, in particular by the 53 Geo. 3. c. 116. (3), which appoints a new mode of setting the assize, by the 38 Geo. 3. c. 62. s. 1., which required an addition to be made on account of a new duty on salt; and by the 13 Geo. 3. c. 62. s. 19., which directs that one or two bailiffs, in whom the chief magistracy of a corporation is vested, may act in the assize in the absence of the other.

Where Assize is set.

It is enacted, that where an assize is thought proper to be set, no person shall make or expose for sale any sort of bread except wheaten and household (otherwise brown) bread, and such other sorts of bread as shall be allowed in the assize; but where it has been usual to make, or the persons setting the assize shall allow the making of bread with the meal or flour of rye, barley, oats, beans, or pease, or of any such different sorts of grain mixed

(1) Cook v. Loveland, 2 Bos. & Pul. 31. Let. Pat. 26. May 11. 2 Eliz.

(2) See Burn, J. Bread, s. 1 & 2, where all the provisions upon this subject, except those that relate exclusively to London, &c. are very fully detailed. See 51 Hen. 3. st. 6. 8 Ann. c. 18. s. 1. the old stat. as to the assize.

(3) With mode of making returns and penalty for false returns, &c.

together, the same may be there made and sold accordingly; and if any person shall offend in the premises, and be convicted thereof by confession or oath of one witness before any magistrate or justice within the limits of their jurisdiction, he shall forfeit not exceeding 40*s.* nor less than 20*s.* (1) BREAD.

Assize. Bread is not allowed to be sold at any greater price than the assize price; nor can a baker refuse to sell bread of any of the sorts allowed or ordered by the act to be made, to any person who tenders ready money in payment when he has any loaf in his possession to be sold more than shall be requisite for the immediate necessary use of his family or his customers, the proof of which, if required, lies upon him, on pain of forfeiting not more than 40*s.* nor less than 10*s.* (2). Bread of an inferior quality to wheaten is not allowed to be sold at a higher than the assize price for household, penalty 20*s.* (3). And by an old statute of Edw. 6., a baker conspiring not to sell bread, except at certain prices, is liable to forfeit £10 for the first offence, and if not paid in six days, twenty days' imprisonment, and bread and water; for the second offence £20, or the pillory; and for the third offence £40, or the pillory, the loss of an ear, and perpetual infamy. (4)

Ingredients. The statute 31 Geo. 2. c. 29. requires, that the several sorts of bread for sale shall be always well made in their several degrees according to the goodness of the several sorts of meal or flour of which they ought to be made; and no alum or other mixture except only the genuine meal or flour which ought to be put in it, and common salt, pure water, eggs, milk, yeast, and barm, or such leaven as shall be allowed to be put by those who have set the assize; and where no assize is set (5), then such leaven as any justice within his jurisdiction shall allow to be used in making dough or bread, or as or for leaven to ferment dough, or on any other account, in the trade of making bread, under any pretence whatever, on pain that every person (other than a servant or journeyman), who shall knowingly offend in the premises, and shall be convicted thereof by confession or oath of one witness before any such magistrate, shall forfeit not more than

(1) 31 Geo. 2. c. 29. s. 3.
(2) 31 Geo. 2. c. 29. s. 26.
(3) 31 Geo. 2. c. 29. s. 27.
(4) 2 & 3 Edw. 6. c. 15.
(5) See now where no assize is set, 59 Geo. 3. c. 36. s. 7, 8. £5 penalty, infra, and in London, 55 Geo. 3. c. 99. s. 3. ante.

BREAD. £10, nor less than 40s., or shall by warrant of such justice be apprehended and committed to the house of correction, or some prison where the offence has been committed, or the offender apprehended, there to remain and be kept to hard labour for not more than one calendar month, nor less than ten days. And a servant or journeyman knowingly offending, is liable to forfeit not more than £5, nor less than 20s., and to be committed for the like time; and the name and abode of the offender are to be published, together with his offence, in a newspaper (1). There is also a provision against adulterating meal; penalty not more than £5, nor less than 40s. (2). Also against making a different sort of meal from that which the bread purports to be made of; penalty not more than £5, nor less than 20s. (3)

Weight. By statute 50 Geo. 3. c. 73., it is enacted, that if any person residing beyond the city of London, or the liberties thereof, or beyond ten miles of the royal exchange, shall make or expose for sale any bread deficient in weight according to the assize, it shall be lawful for a magistrate before whom an information is laid on the oath of one witness, and also for any peace officer acting under a warrant, at any seasonable times in the day-time, to enter into the baker's premises to search for, view, weigh, and try such bread as shall be found there, and shall have been baked within twenty-four hours, and which bread shall be weighed by the bushel, or in any larger or smaller quantity as may be found most convenient; and if, on weighing it, any deficiency be found on the average of the whole weight of the bread found, on the oath of the party weighing, a forfeiture is incurred of not more than 5s. for every ounce, and so in proportion for less than an ounce, besides the loss of the bread, except it be proved by the oath or affirmation of one or more respectable housekeepers that the deficiency arose from accident or from some confederacy (4). It is also required, that every baker and seller of bread shall have fixed, in some convenient part of his shop, a beam and scales, with proper weights of the assize weight of a half peck loaf, a quartern, and a half quartern, and also of an 1s. 6d., 1s. 0d., and 3d. loaf; and any person who may purchase any such loaf of bread from any baker or seller of bread may, if he think proper, require it to be weighed in

(1) 31 Geo. 2. c. 29. s. 21.
(2) 31 Geo. 2. c. 29. s. 22.
(3) 31 Geo. 2. c. 29. s. 23. See infra, as to mealmen, &c.
(4) 50 Geo. 3. c. 73. s. 1.

his presence, and if such loaf be found deficient in weight, the person requiring it to be weighed shall have the deficiency made up with other bread, or another loaf given in lieu of it, as may be required; and any such baker or seller of bread who shall neglect to fix such beam and scales, or to provide and keep for use proper weights, or whose weights shall be deficient, or who shall refuse to weigh any half peck loaf, quartern, or half quartern, in presence of the party requiring it, and shall be convicted either by the oath of one witness or his own confession, shall forfeit a sum not exceeding 10*s*. as the magistrate shall think fit. (1) BREAD.

And by statute 31 Geo. 2. c. 29., if bread made for sale be deficient in weight according to the assize, the offender is liable to forfeit not more than 5*s*., nor less than 1*s*., for every ounce deficient; and where less than an ounce is wanting, not more than 2*s*. 6*d*., nor less than 6*d*., so as such bread which is complained of as deficient in any city, &c. be brought before some magistrate and weighed before him within twenty-four (since extended to forty-eight) (2) hours after the baking thereof; the party complained of, however, is allowed (as usual in such cases), to prove that the defect arose from accident, or from a conspiracy against him (3). Where a statute prohibited the sale of bread within twenty-four hours after its being baked, the provision was held to apply to a sale on commission, although the vendor desired the retail dealer to whom he supplied it not to sell it again till after the expiration of the limited time; and where a power of conviction is given to a magistrate, he is considered the sole judge of the weight of the evidence adduced before him, and the court of K. B., on a removal by certiorari, will not examine whether he has drawn a correct conclusion. But if, from the evidence as stated in the conviction, it appear that there is no proof of a material fact alleged in the information, the conviction will be quashed. (4) Weight, when an Assize.

It is also enacted by the 50 Geo. 3. c. 73., that no person employed in the business of a baker shall on the Lord's day make any household bread, rolls, or cakes of any kind, or on any part of that day, except between the hours of ten in the forenoon, and half-past one in the afternoon, expose to sale bread, rolls, or

(1) 50 Geo. 3. c. 73. s. 2.
(2) 39 & 40 Geo. 3. c. 74. s. 4.
(3) 31 Geo. 2. c. 29. s. 24. 39 & 40 Geo. 3. c. 74. s. 4.
(4) The King v. Smith, 8 T. R. 588

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cakes of any kind, or bake or deliver victuals after half-past one in the afternoon, or in any other manner be engaged in the business of a baker, except so far as may be necessary in setting and superintending the sponge, to prepare the bread or dough for the next day's baking; and that no victuals shall be brought to or taken from a bakehouse during the time of divine service, or within a quarter of an hour of its commencement; a person offending against these regulations, or making any sale or delivery allowed by the act between the said hours, otherwise than within the bakehouse or shop, and being convicted before a justice within two days from the commission of the offence, either on view or confession or proof by one or more witnesses, is liable to forfeit for the first offence 5*s*., for the second 10*s*., for the third 15*s*., and also to pay the costs of the prosecution; and the amount thereof, together with such part of the penalty as the justice shall think proper, to be allowed to the prosecutor for loss of time in instituting and following up the prosecution at a rate not exceeding 3*s*. *per diem*, and be paid to the prosecutor for his use and benefit, and the residue to be paid to the justice, and within seven days after his receipt, transmitted to the churchwardens or overseers; in default of distress to levy the penalty, the offender to be committed on the first offence for seven days, on the second, fourteen, and a subsequent one, twenty-one days (1).

A late statute has been passed (2) to regulate the making and sale of bread out of the city of London and the liberties thereof, and beyond the weekly bills of mortality, and ten miles of the royal exchange, where no assize is set. This statute provides, that *although no assize is set*, according to the 53 Geo. 3. c. 116., no loaves deemed assize loaves in that act, and the weight of which varies according to the variation in the price of grain, shall be made for sale where the priced loaves are also at the same time made for sale or allowed to be sold, *i. e.* that no assize loaves of the price of 3*d*., and priced loaves called half quartern, nor assize loaves of the price of 6*d*., and priced loaves called quartern, nor assize loaves of the price of 1*s*., and priced loaves called half peck, nor assize loaves of the price of 1*s*. 6*d*., and priced loaves called peck

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(1) 50 Geo. 3. c. 73. s. 3.; s. 4. saves the right of the universities, and by s. 5. the powers of former acts apply.

(2) 59 Geo. 3. c. 36. repeals 5 Geo. 3. c. 11. 33 Geo. 3. c. 37. 41 Geo. 3. c. 12.

loaves, shall at the same time be made for sale; the object of the legislature being, that unwary persons might not be imposed upon and injured by buying assize loaves referred to in the tables of the act as and for priced loaves so referred to, by buying such priced loaves as and for such assize loaves; penalty not more than 40*s*., nor less than 10*s*. (1) The 59 Geo. 3. also contains provisions similar to those that now prevail within the bills of mortality relative to the materials with which bread may be made and sold (2); to the use of alum (3); to the adulteration of corn, meal, or flour (4); to the marking of loaves made of meal of any other grain than wheat (5); to searching the premises of bakers, and seizing adulterated goods and ingredients (6), and the punishment for making and keeping the same (7), and obstructing the search of the officers (8); together also with similar power to magistrates and directions of the proceedings in prosecutions for offences (9). The provisions out of the bills of mortality where no assize is set, are also nearly similar to those within these limits, so far as regards the weight of bread (10); the penalty of 5*s*. for every deficient ounce being imposed on selling bread short of weight, the bread being weighed within twenty-four hours after baking, in the presence of the magistrate and of the offender if he appear, and evidence given that it is in the same state as when taken from the baker (11); also so far as respects the offence of selling bread (except to travellers, or in cases of urgent necessity) or delivering bakings after half-past one *p. m.*, or in any other manner exercising the trade of a baker (except so far as may be necessary in setting or superintending the sponge to prepare the bread or dough for the next day's baking) on a Sunday, no meat, &c. being allowed to be brought to or taken from a bakehouse during the time of divine service, or within a

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(1) 59 Geo. 3. c. 36. s. 3.

(2) 55 Geo. 3. c. 99. s. 2. confirmed by 59 Geo. 3. c. 36. as to London, ante, p. 274.

(3) 59 Geo. 3. c. 36. s. 4. penalty £5, and in default of payment imprisonment for six months; offender's name to be inserted in newspaper, see ante, p. 274.

(4) s. 5. penalty £5. see ante, p. 275.

(5) s. 6. penalty 40*s*. for each loaf, see ante, p. 275.

(6) s. 7. see ante, p. 275.

(7) s. 8. penalty £5, or imprisonment for six months, and offender's name to be published in newspaper, see ante, p. 275.

(8) s. 9. penalty 40*s*. see ante, p. 275.

(9) ss. 14 to 24.

(10) 59 Geo. 3. c. 36. s. 10. penalty 40*s*. see ante, p. 275., and 55 Geo. 3. c. 99. s. 10.

(11) 59 Geo. 3. c. 36. s. 11. penalty 5*s*. for every ounce deficient, see ante, p. 275.

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quarter of an hour of the time of its commencement: penalty for the first offence 5s., for the second 10s., and for the third 20s. together with costs, to be paid to the prosecutor, he being also allowed at the rate of 3s. a day for loss of time, and the residue of the penalty to be paid to the justice for the benefit of the poor; for want of distress the offender to be committed to the house of correction, on the first offence fourteen, or any other, twenty-one days. (1)

Bread (continued) Miller, Mealman, &c. 1. Adulterating Meal, &c.

The miller is also subject to various prohibitory regulations, both in the criminal and the civil law (2). At common law, an indictment for the crime of larceny, which implies a trespass and a felonious taking of the thing stolen, has been holden to be maintainable against a person who has goods by the delivery of the party; as, for instance, a miller to whom corn is delivered to be ground, and who may be guilty of felony by taking away any part of that corn with intent to steal it (3). But it seems that a criminal prosecution cannot be sustained against a miller for changing corn sent to him to be ground, and delivering an article of an inferior quality (4). Thus it has been determined, that an indictment does not lie against a miller, charging him with receiving good barley to grind at his mill, and delivering a mixture of oat and barley meal, different from the produce of the barley, and which was musty and unwholesome. The defendant having been found guilty of the offence alleged against him, it was assigned, for error, amongst other things, that no indictable crime was charged. As to one of the grounds upon which it was contended that the offence charged was not indictable, namely, that the statement should have been that the defendant delivered the barley to be eaten as for food, and that it was not fit to be eaten by man, Lord Ellenborough, C. J., said, that if the indictment had alleged that the defendant delivered the barley as an article for the food of man, it might possibly have been sustained; but that he could not say that its being musty and unwholesome, necessarily, *lex vi termini*, imported that it was for the food of man; and it was not stated

(1) 59 Geo. 3. c. 36. s. 12. see ante, p. 276.

(2) In Barlow's Justice, ch. 112. tit. Weights and Measures, it is said that millers are not to be common buyers of any corn to sell the same again either in corn or meal, but in that only to serve for the grinding of corn that shall be brought to their mills.

(3) Hawk. b. 1. c. 33. s. 5.

(4) That it can, see Rex v. Wood, 1 Sess. Cas. 217., but see infra.

that it was to be used for the sustentation of man, only that it was a mixture of oat and barley meal. As to the other point, that this was not an indictable offence, because it respected a matter transacted in the course of trade, and where no tokens were exhibited by which the party acquired any greater degree of credit; that if the case had been, that this miller was owner of a soke-mill, to which the inhabitants of the vicinage were bound to resort in order to get their corn ground, and that the miller, abusing the confidence of this his situation, had made it a colour for practising a fraud, this might have presented a different aspect; but as it then stood, it seemed to be no more than the case of a common tradesman who was guilty of a fraud in a matter of trade or dealing, such as was adverted to in Rex v. Wheatley (1), and the other cases referred to before his lordship as not being indictable(2). A speedier remedy than that which existed at common law is now provided for the punishment of frauds committed by persons exercising the business of a miller, either in adulterating the meal or delivering it deficient in weight, in a summary manner, before justices of the peace. If information be given upon oath to a magistrate, that there is reasonable cause to suspect that any miller who grinds grain for toll or reward, or any dresser, bolter, or manufacturer of meal or flour for sale, doth mix up with or put into any meal or flour ground or manufactured for sale, any mixture, ingredient, or thing whatsoever, not the genuine produce of the grain such meal or flour shall import and ought to be, or whereby the purity of any meal or flour in the possession of such miller or mealman shall be in any wise adulterated, in such case it shall be lawful for any such magistrate or justice, or for any peace officer authorized by warrant, at all seasonable times in the day, to enter into any house, mill, shop, bake-house, stall, bolting-house, warehouse, or out-house of any such miller or mealman, and to search whether any such mixture, ingredient, or thing shall have been mixed up with or put into any meal or flour as aforesaid, or whereby such meal or flour shall be in any wise adulterated; and if on such search it shall appear that any offence has been committed in any mill, bolting-house, or other place allowed to be searched, contrary to this act, then it shall be lawful for any magistrate or justice, or peace officer as aforesaid, to seize any meal or flour deemed in such search

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Searching on Justices' Warrant, and 50l. Penalty for adulterated Meal.

(1) 2 Burr. 1125.

(2) Rex v. Haynes, 4 M. & S. 214.; sed vide as to changing corn, Rex v. Wood, 1 Sess. Cas. 217.

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to have been adulterated, and all ingredients found or deemed to have been used or intended for use in or for any such adulteration, and such as shall be seized by such officer, shall, with all convenient speed, be carried to some magistrate or justice as aforesaid; and if any magistrate or justice who shall make such seizure, or to whom any such seizure shall be brought, shall adjudge any mixture or ingredients, not the genuine produce of the grain any such meal or flour shall import or ought to be, shall have been put therein, or that the purity of such meal or flour was thereby adulterated, then such magistrate or justice may dispose of the same as in their discretion they may from time to time think proper (1). Every miller, mealman, &c. in whose house, mill, &c. any mixture or ingredient shall be found which shall be adjudged by any magistrate to have been lodged there with intent to have adulterated the purity of any meal or flour, shall, on conviction by confession or oath of one witness before any such magistrate or justice, forfeit not exceeding £10., nor less than 10*s*., unless he shall make it appear that such mixture, &c. was not there for such purpose as aforesaid, but was there for some lawful purpose; and the magistrate or justice convicting may, out of the money forfeited, cause the offender's name, place of abode, and offence to be published in some newspaper in or near the county, city, or place (2). By the wilfully obstructing of such search or opposing of the same, or carrying away of the mixture, &c. a forfeiture is incurred not exceeding £5 nor less than 20*s*. (3); and no miller shall act as a justice or magistrate herein (4). For the more easy recovery of the penalties and forfeitures, any justice may summon before him a party accused under the act; if he shall not appear, or offer reasonable excuse for his default, the justice shall issue his warrant for apprehending him, and on appearance of the party accused, or if he do not appear on notice given or left for him at his usual abode, or if he cannot be apprehended, then the justices may proceed to examine the witnesses on either side on oath; and after hearing the parties and the witnesses, he shall convict or acquit the party accused. If the forfeiture be not paid within twenty-four hours after conviction, such justice shall issue his warrant of distress; and if the party convey away his goods out of the jurisdiction of the convicting justice, so that the penalty cannot be levied, then the warrant shall be backed, and there-

(1) 31 Geo 2. c. 29. s. 29.
(2) s. 30.
(3) s. 31.
(4) s. 32.

upon the penalty forfeited be levied; and if not redeemed in five days from the taking of the distress, the goods seized shall be appraised and sold, and the overplus, if any, returned, after deducting the costs of the prosecution, distress, and sale; the convicting justice to ascertain the same, or the justice who backed the warrant, if either be alive, if not, then some other justice of the county, &c. where the conviction took place; and in default of sufficient distress and proof of conviction and nonpayment, such justice shall by warrant commit to the common gaol or house of correction of the city, &c. where the offender shall be found, there to remain for one calendar month, unless after such commitment payment be made before the expiration of the said calendar month; all which penalties and forfeitures go to the informer. (1)

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Provision has been also made for the delivery of the due weight of the corn delivered. By 36 Geo. 3. c. 85. every miller or other person keeping a mill for grinding of corn shall have in such mill a true balance, with proper weights, according to the standard of the Exchequer; and any person appointed by 35 Geo. 3. c. 102. to examine weights and balances may examine the same, and shall proceed therein as is by that act directed; and every such miller or other person in whose mill shall be found no balance or weights shall forfeit not exceeding 20*s.*; and every such miller or other person in whose mill shall be found any weight not according to such standard, or any false or unequal balance, and all persons who shall obstruct any such person in examining the same, shall forfeit the like penalties as persons committing the like offences against the said act of 35 Geo. 3. c. 102. (2) Every person who shall bring any corn to be ground may require the miller or person acting for him or keeping the mill to weigh in his presence such corn before it shall be ground, and after it shall be ground to weigh the produce thereof, and on refusal shall forfeit not exceeding 40*s.* (3) Every miller or other person keeping such mill shall after grinding any corn deliver to the person who brought the same, if he require it, the whole produce of such corn in weight, allowing for the waste in grinding, and by taking toll where toll is hereinafter allowed to be taken; and if such corn shall be dressed into flour, then the whole produce in weight, allowing for the

Weight of Corn, &c. from the Miller.

(1) 31 Geo. 2. c. 29. s. 33, 4.
(2) 36 Geo. 3. c. 85. s. 1.
(3) s. 2.

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diminution in weight that shall have been caused by the waste in grinding and dressing, and by taking toll in cases where toll is herein-after allowed to be taken; and if such corn, on being weighed after grinding, or after grinding and dressing, shall appear to weigh less than the full weight, after allowing for the diminution aforesaid, such miller shall for every bushel of corn so deficient in weight forfeit not exceeding 1*s*., and also treble the value of such deficiency (1).

Tolls.

Where toll is allowed to be taken, it is to be deducted before the corn is put into the mill (2). No miller or other person keeping a mill shall demand or take any part of the corn brought to be ground by way of toll (3), but in lieu thereof shall be entitled to demand payment in money; and if he shall demand or take any part of such corn, or the produce thereof when ground by way of toll for payment, he shall forfeit not exceeding £5.; but if the person bringing such corn to be ground shall not have money to pay for the grinding the same, such miller or other person, with the consent of the person so bringing the same, may take such part of the produce of such corn as will be equal to the money price expressed in the table required by the act; provided that nothing in this act shall extend to the mills called soke-mills, or such other ancient mills where the right and obligation of the possessors thereof to grind corn for particular purposes, or within particular districts, and to take a fixed and certain toll for grinding, are established by ancient custom and the law of the land, but such mills shall continue to take toll in the same quantity and manner as they had been accustomed to do (4). Every miller or other person who shall grind for hire or toll shall put up, in some conspicuous place in his mill, and renew when necessary, in fair and legible characters, a table of the prices in money or of the amount of toll or multure for which the several operations of his mill are to be performed respectively, on pain of forfeiting 20*s*. for every offence in omitting so to be set up as aforesaid (5); but nothing in this act to extend to any mill kept for the private use of the proprietor or occupier only (6). All penalties and forfeitures imposed by this act shall and may be recoverable before one justice where the offence is committed upon conviction (a form

(1) 36 G. 3. c. 85. s. 3.
(2) s. 4.
(3) See the ancient provisions as to the miller's toll-dish, which was required to be according to the statute, Barlow's Justice, c. 112.
(4) s. 5.
(5) s. 6.
(6) s. 7.

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of which is given by the act) (1) on confession or oath of one witness, who may levy the same by distress, half to the informer and half to the poor, returning the overplus (if any), after deducting the costs of such conviction, distress and sale, to the offender; and for want of sufficient distress such offender shall be committed to the common gaol or house of correction for any time not exceeding one month, unless the penalty and costs be sooner paid. If any person shall find himself aggrieved by the judgment of such justice he may, upon giving security to the amount of such penalty and forfeiture, together with such costs as shall be awarded in case such judgment be affirmed, appeal to the next sessions, who may hear and finally determine the same; and in case such judgment be affirmed, the sessions may award such person to pay such costs of appeal as to them shall seem meet; and no such judgment or conviction shall be removed by certiorari into any other court whatsoever (2); and every information shall be laid within ten days after the offence has been committed, otherwise the same shall be of no effect (3). The conviction is to be certified to the next sessions, and then filed among the records (4). Anciently it appears that by an ordinance of Edw. I. the toll of a mill was required to be taken according to the custom of the land, and according to the strength of the watercourse either to the 20th or 24th corn (5); yet in some places the millers claimed and took the 16th part, and where the custom had been so used time out of mind, it seems to have been considered good and warrantable (6). The miller ought (it was said) to take but one quart for grinding of one bushel of hard corn, but if he fetch and carry back the grist to the owner, he may take two quarts of hard corn, and this hard corn is intended of wheat, rye, meslin, (which is wheat and rye mixed); and for malt the miller shall take but half so much toll as he taketh for hard corn, that is, one pint in the bushel, as malt is more easily ground than wheat or rye, but if the miller do fetch to his mill and carry back the malt to the owner's house, then the miller also shall have double toll (7). The toll of a mill must be regulated by custom, and if the miller take more than the custom warrants, it is extortion; but if it be a new mill

Toll for grinding.

(1) 36 Geo. 3. c. 85. s. 10.
(2) s. 8.
(3) s. 9.
(4) s. 10.
(5) Burn, J. tit. Mill. 1 Hawk. stat. 181. Dalt. J. c. 112. p. 253. 3 Ed. 1. de Victu. Rast. tit. Weights. div. 7.
(6) Dalt. c. 112. p. 253.
(7) Id.

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there, the miller is not restrained to any certain toll, but the persons who will have their corn ground there must comply with the miller's demands; and whatsoever he takes, it is not extortion, because it is the voluntary agreement of the parties (1). In some places the tenants are bound to have their corn ground the lord's mill (2). In an action on the case for erecting a mill, the lord declared upon a custom for all the inhabitants to grind at his mill, and that the defendant had built a mill there contrary to the custom, and this was adjudged a good custom; and suit to a mill may be by reason of tenure or service, and also by custom, and so may well bind strangers (3). A newly erected house within the precincts is within the custom of multure, and none may grind elsewhere, except in case of excessive toll, or that the grist cannot be ground in convenient time. (4)

Destruction of Mills, &c. Felony.

The owners of mills are protected in the enjoyment of their property by several statutes, by which the penalty of death is annexed to the offence of wilfully setting on fire or demolishing them. Lord Ellenborough's act provides this punishment, for wilfully, maliciously, and unlawfully setting fire to any house or mill, &c. whether it is in the possession of the person setting fire to it, or of any other person, or body corporate, with intent to injure or defraud his Majesty or any of his subjects (5). On a prosecution under this statute, where the fact of setting fire to the mill appeared from the prisoner's confession, but the witnesses for the prosecution, who were the clerks of the owner of the mill, stated that the prisoner was a harmless inoffensive man, that there had never been any quarrel or disagreement between him and his master or any of the clerks, and that they were not aware of any motive which could induce him to do the act, the judges thought, after the prisoner had been respited in order that their opinion might be taken, that the offence came within the act, as burning a mill under such circumstances must necessarily have been done with an intention to injure, though the principal object of the statute was to comprise the cases of a person's burning the house, &c. or mill of which he was tenant or owner, to the injury of his landlord or neighbour, or to defraud the insurance. Sentence of death was accordingly passed

(1) Per Holt, C. J. 1 Ld. Raym. 149.

(2) Vin. Ab. Mill, / 2 Saund. 112.

(3) Hix v. Gardine , 2 Bulst. 195. See also Com. Dig. tit. Droit, H.

(4) Hardr. 177. 3 Burn, J. tit. Mill.

(5) 43 Geo. 3. c. 58.

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upon the prisoner; but he was afterwards pardoned on condition of being imprisoned one year and kept to hard labour in the house of correction (1). The stat. 52 Geo. 3. c. 130., after reciting the 9 G. 1. c. 22., 9 G. 3. c. 29., 41 G. 3. c. 24., and 43 G. 3. c. 58., and that it was expedient and necessary that more effectual provisions should be made for the protection of property not within the provisions of those acts, ordains, that every person who shall wilfully and maliciously burn or set fire to any buildings, erections, or engines used or employed in the carrying on or conducting of any trade or manufactory, or any branch or department of any trade or manufactory of goods, wares, or merchandizes of any kind or description, or in which any goods shall be warehoused or deposited, shall, upon being lawfully convicted, be adjudged guilty of felony without benefit of clergy (2); and it enacts, that if any persons unlawfully, riotously, and tumultuously assembled together in disturbance of the public peace, shall unlawfully and with force demolish or pull down, or begin to demolish or pull down, any erection (3) and building, or engine used or employed in carrying on or conducting any trade or manufactory of goods, wares, or merchandize of any kind or description whatsoever, or in which any goods, wares, or merchandize shall be warehoused or deposited, that then every such demolishing or pulling down, or beginning to demolish or pull down, shall be adjudged felony without benefit of clergy, and the offenders therein shall be adjudged felons, and shall suffer death, as in cases of felony, without benefit of clergy (4). The person or persons injured or damnified by such demolishing or pulling down wholly or in part of any such erection, building, or engine as aforesaid, are entitled to recover the value of such erection, building, or engine, and of the machinery belonging thereto, or used therein, which shall be destroyed in such demolishing as aforesaid, or the amount of the damage which may be done to any such erection, building, or engine, or machinery aforesaid, in such tumultuous and riotous demolishing in part as aforesaid; and such value and damage shall and may be recovered, levied, raised, and reimbursed in such manner and form, and by such ways and means as are particularly provided, directed, or referred to in the 1 Geo. 1. stat. 2., in respect of the

(1) Farrington's case, 1 Burn's Justice, 419. tit. Burning, Staff. Sum. Ass. 1811.

(2) 52 Geo 3. c. 130. s 1.

(3) See Hiles v Shrewsbury, 3 East, 457.

(4) 52 Geo 3 c. 130 s 2

BREAD-MILLERS, etc.

Proceedings to recover Damages.

several descriptions of buildings therein mentioned (1). No person or persons shall be enabled to recover any damages by virtue of this act, unless he or they by themselves or by their servants, within two days after such damage or injury done him or them by any such offender, shall give notice of the offence unto some of the inhabitants of some town, village, or hamlet near unto the place where any such fact shall be committed, and shall, within four days after such notice, give in his, her, or their examination upon oath, or the examination upon oath of his, her, or their servant or servants that had the care of his or their erections, buildings, engines, or machinery so destroyed or damaged as aforesaid, before any justice of the peace of the county, liberty, or division where such fact shall be committed, inhabiting within the said hundred where the said fact shall happen to be committed, or near unto the same, whether he or they do know the person or persons that committed such fact, or any of them; and if, upon such examination, it be confessed that he or they do know the person or persons that committed the said fact, or any of them, that then he or they so confessing shall be bound by recognizance to prosecute such offender or offenders by indictment or otherwise, according to the law of this realm: provided that no person who shall sustain any damage by reason of any offence to be committed by any offenders contrary to the act, shall be thereby enabled to sue or bring any action against any inhabitants of any hundred where such offence shall be committed, except the party or parties sustaining such damage shall commence his or their action or suit within one year next after such offence shall be committed; but this notice may, in Scotland, be given to the sheriff or steward depute or substitute of the county or stewartry where such fact shall happen to be committed, in order that such measures may be taken as the law of Scotland prescribes in such cases. (2)

In the case of the demolition of the works of mills, the determining whether the works destroyed belonged to the mill or were independent of it, forms a question for the jury, whose finding will be conclusive of that fact (3). In an action against the hundred, founded on the 41 Geo. 3. c. 24., to recover the damage sustained by the demolishing of mills, it is not necessary

(1) 52 Geo. 3. c. 140. s. 3.
(2) s. 4.
(3) Rushforth v. Beatson. Dyson v. Beatson, 1 Price R. 343.

BREAD. MILLS, etc.

to aver that the demolition was felonious (1). To recover, under the 52 Geo. 3. c. 130., the value of premises feloniously destroyed, which belonged to several partners in trade, three of whom were present when the fact was committed, the examination of one of the firm upon his oath, but without stating, that, to the best of his belief, the others had no knowledge of the person who committed the fact, is insufficient (2). The offence of burning, though specifically mentioned in a clause of the statute as distinct from a demolishing or pulling down, is included in the latter terms. It seems that a staith, which is a place of deposit for coals, is an erection, building, or engine within the meaning of the 1st and 2d sections of the 52 Geo. 3. c. 130.(3) The occupier of a mill may maintain an action for forcing back water and injuring his mill, although he has not enjoyed it precisely in the same state for twenty years; and it is no defence to such an action, that the occupier had, within a few years, erected in his mill a wheel of different dimensions, but requiring less water than the old one, although the declaration stated the plaintiff to be possessed of a mill, without alleging it to be an ancient mill. (4)

BREWER.

Ingredients.

As to the ingredients to be used by the *brewer* or dealer in or retailer of *beer*, it is required, by the 56 Geo. 3. c. 58., that he shall not have in his possession, or use in worts or beer, any liquor, &c. for darkening the colour, except brown malt, ground or unground, as commonly used in brewing; nor any melasses, honey, liquorice, vitriol, quassia, *coculus Indicæ*, grains of paradise, guinea pepper, or opium, as a substitute for malt or hops. Penalty, £200; besides the forfeiture of the noxious ingredients, the beer, and the vessels containing them (5). A £500 penalty, besides forfeiture of the materials, is also incurred by any druggist or other person who supplies these ingredients for the brewer (6). These penalties may be recovered or mi-

(1) Beatson v. Rushforth, 7 Taunt. 45. 2 Marsh, 362. 3 Price, 48. S. C.

(2) Nesham v. Armstrong, 1 Barn. & Ald. 146. 1 Holt, 466. S. C.

(3) Nesham v. Armstrong, 1 Holt, C. N. P. 466.

(4) Saunders v. Newman, 1 Barn. & Ald. 258.

(5) 56 Geo. 3. c. 58. s. 2., which repeals 51 Geo. 3. c. 87. See ante, 1 vol. 822, 3.; and as to exportation, id. 595. 600, 1., and see penalties by 10 & 11 W. 3. c. 21. s. 34.; and as to notice to excise before delivering out beer, see 15 Car. 2. c. 11.; and mixing after it is delivered out, 7 & 8 W. 3. c. 30. s. 23.; and mixing by the retailer, 22 & 23 Car. 2. c. 5. s. 11.

(6) 56 Geo. 3. c. 58. s. 3.

BREWER AND BEER.

tigated as excise penalties are, or by action of debt, one-half to the king and the other to the informer (1). The public interest is also protected by various statutes, which regulate the size of the cask in which beer is allowed to be sold. To prevent impositions, it is required, by a stat. 23 Hen. 8. c. 4., that no brewer shall use the trade of a cooper, nor make casks for his own use. He may, however, keep one or two servants to amend or hoop casks (2). Every barrel for beer is required, by statute, to contain 36 gallons; a kilderkin, 18 gallons; a firkin, 9 gallons: a barrel for ale, 32 gallons; a kilderkin, 16 gallons; a firkin, 8 gallons. And no cooper can make any other vessel for beer or ale of any greater or less number of gallons, unless he cause to be marked ostensibly upon it the number of gallons which it contains (3). By stat. 59 Geo. 3. c. 53., after reciting that, by the 42 Geo. 3. c. 38., it was amongst other things enacted, that all beer or ale above the price of 16*s.* the barrel, exclusive of the duties, should be deemed strong beer or ale; and all beer at or under that price, table beer; and that it is expedient, during the continuance of the duties now imposed upon malt, to permit brewers of table beer to increase the price as therein mentioned, —it is enacted, that all beer and ale above the price of 18*s.* the barrel (exclusive of the duties) shall be deemed strong beer or ale, and all beer of that price, or under it, table beer (4). As soon as table beer is cleansed and put into casks, each cask is required to be marked with the capital Roman letter T, of the length of four inches at least (5); and such beer shall be kept in a separate storehouse or cellar from any other beer (6). Penalty, £50. Nor shall any table beer be put into any vessel containing more than three barrels, except for the purpose of preserving such vessel in a state to receive strong beer; but no strong beer shall be put into such vessel until the whole of the small beer is taken out, to the satisfaction of the proper officer of excise (7). Nor is any strong beer to be mixed with table beer or water in any vessel whatsoever, except in a known and entered guile tun, working tun, or fermenting tun (8). Also,

Casks, and different sorts of Beer.

(1) 56 Geo. 3. c. 58. s. 4.
(2) 23 H. 8. c. 4. s. 10 and 12.
(3) 23 H. 8. c. 4. s. 2.; and see indictment on this statute for selling beer short of measure, 3 Chit. Crim. L. 1004.
(4) 59 Geo. 3. c. 53. s. 25.
(5) 42 Geo. 3. c. 38. s. 9. Penalty £50. See 22 Geo. 3. c. 68. s. 7.
(6) s. 10. See 22 Geo. 3. c. 68. s. 8.
(7) s. 11.
(8) s. 13. See 2 Geo. 3. c. 14. s. 2. 7 & 8 W. 3. c. 30.

that no brewer shall keep any other conveyance or communication from any copper, except the regular discharge pipes, on pain of forfeiting £200. (1)

BREWER AND BEER.

BRICKS AND TILES.

Price.

The statute 17 Geo. 3. c. 42. provides, with respect to the price of *bricks* and *tiles*, that all contracts by any brickmaker, or person concerned in making bricks or tiles for sale, for engrossing bricks and tiles, or for restraining the free selling of the same, or for limiting or fixing the price, shall be void: a person concerned is liable to a penalty of £20, or if a servant £10, recoverable by action of debt; half to the informer, and half to the poor (2). The same statute also provides, with respect to the size and dimensions of bricks or pantiles (3), that all bricks made for sale in England shall, when burnt, be not less than 8½ inches long, 2½ inches thick, and four inches wide; and pantiles not less than 13½ inches long, 9½ inches wide, and half an inch thick (4), under the penalty of 20s. for every 1,000 bricks, and 10s. for every 1,000 pantiles, and so proportionably for a greater or less number (5). And where a person sold and delivered bricks of less than the statutable size, it was held that he could not recover the price, although the buyer had received and used them (6). It is also provided, that the size of the sieves or screens for sifting or screening sea-coal ashes to be mixed with brick earth in making bricks, shall not exceed one quarter of an inch between the mashes (7). The act directs that no penalty, in respect of the dimensions of bricks or tiles, shall be recovered, unless the information be laid within one month after the sale or delivery thereof (8); and that all penalties and forfeitures as to which no other direction is given, shall be recovered before one justice, on proof, by confession or oath of one witness, the oath to be administered gratis; to be levied by distress, and distributed one-half to the informer, and half to the poor; and for want of distress the offender may be committed for two months, unless the money be sooner paid (9). An appeal is given to the sessions, after notice given and recognizance entered into; but no *certiorari* is allowed, nor can the proceedings be quashed for

Size of Bricks, &c.

(1) 42 Geo. 3. c. 38. s. 15.
(2) 17 Geo. 3. c. 42. s. 4.
(3) And see the old statutes which expired in 1773, 12 Geo. 1. c. 35. 2 Geo. 2. c. 15. 3 Geo. 2. c. 22. 9 Geo. 3. c. 37. 10 Geo. 3. c. 49.
(4) 17 Geo. 3. c. 42. s. 1.
(5) Id. s. 2.
(6) Law v. Hodson, 11 East, 300.
(7) 17 Geo. 3. c. 42. s. 3.
(8) 17 Geo. 3. c. 42. s. 7.
(9) 17 Geo. 3. c. 42. s. 5.

BRICKS AND TILES.

Quality and Size of Tiles, etc.

want of form (1). An old statute of 17 Edw. 4. c. 4: requires that every person using the occupation of making the *tile* called *plain* tile (otherwise called *thak* tile), *roof* tile or cres tile, *corner* tile, and *gutter* tile, shall make it good, seasonable, and sufficient, and well whited and annealed. And the earth whereof any such tiles shall be made, shall be digged and cast up before Nov. 1st next, before they shall be made; and stirred and turned before Feb. 1st next following; and not wrought before March 1st next after; and the same earth, before it be put to making of tile, shall be truly wrought, and hied from stones; and the veins called malin or marle, and chalk, lying commonly in the ground near to the land convenient to make tile, after the digging of the said earth whereof any such tile shall be made, shall be well severed from the earth of which the tile shall be made. And every such plain tile so to be made shall be 10½ inches long, 6¼ inches broad, and half an inch and a quarter thick; roof tile or cres tile 13 inches long, half an inch and half a quarter thick, with convenient depth; gutter tile and cover tile 10½ inches long, with convenient thickness, breadth, and deepness. And if any person shall set to sale any such tile otherwise made, he shall forfeit to the buyer double value of the tile, and make fine and ransom at the king's will; to be recovered by action of debt, with costs; and also, the justices of the peace, and every of them, may hear and determine offences against this act, who shall assess upon the offender no less fine than for every 100 plain tiles, 5s.; for every 100 roof tile, 6s. 8d.; and for every 100 corner or gutter tile, 2s. This statute did not mention *pantiles*, which were then unknown, and which have been provided for as we have seen by 1 Geo. 3. (2).

Entry and Duties. (3)

Every maker of bricks or tiles is required by the excise laws, under a penalty of £100, before he begins to make them, to leave notice in writing at the next excise office of his name and place of abode, and of his sheds, workhouses, or other places of making (4). Duties are imposed upon both these articles (5), but tiles for draining land are exempt by several statutes from all duties (6). The exemption is also extended to tiles which are necessary for the "foundations

(1) 17 Geo. 3. c. 42. s. 8.

(2) Burn, J. tit. Bricks.

(3) Ante, 1 vol. 840 to 842. 823.

(4) 24 Geo. 3. c. 24. sess. 2. s. 4.

(5) 24 Geo. 3. c. 24.—25 Geo. 3. c. 66.—34 Geo. 3. c. 15.—37 Geo. 3. c. 14, 15.—41 Geo. 3. c. 91.—42 Geo. 3. c. 93.—43 Geo. 3. c. 69.—45 Geo. 3. c. 30.—46 Geo. 3. c. 138.

(6) 34 Geo. 3. c. 15.—42 Geo. 3. c. 93.—46 Geo. 3. c. 138.—55 Geo. 3. c. 176.

and support" of such drains, according to the following description; "Flat tiles not exceeding one inch in thickness, each thereof having at one end a semicircular projection, and at the other a semicircular arch or indent, such projection and arch being portions of circles of equal diameters; and each such tile being also not less than nine inches in length, and not exceeding seven inches in breadth; such flat tiles being also perforated with circular holes, each thereof being not less than two inches in diameter, and the sum of the areas of such holes in such flat tile amounting to not less than a quarter part of the surface or superficial content of such flat tile; and no such flat tile being fit or proper for the purpose of being used in building, or in the roof or covering of any house, shed, or other building whatever." (1)

BRICKS AND TILES.

Brickmaker. Bankrupt.

A person who carries on the trade of a brickmaker may become liable to the operation of the bankrupt laws. It has been decided that a man who deals in bricks made of earth taken from the waste without any licence from the lord, to whom he afterwards pays a consideration, is a trader (2). But whether a man who makes bricks for sale upon land demised to him for a term of years, and sells them, is a trader, seems to be unsettled (3). In a late case, however, it was decided, that if a person carry on the business of a brickmaker, upon an estate in which he has no interest, and such an estate is afterwards devised to him, and he after such devise continue such business as a brickmaker, by working the clay on the land, he is not a trader (4). It is said that no tithe is due of common right of bricks, because they are made of the earth. (5)

BUTTER AND CHEESE.

The provisions with respect to *butter* and *cheese* are divisible into two parts, viz. 1st, those that relate to vessels for containing butter and the marks upon them, and to the packing, weight, and goodness of butter; 2dly, to the shipping of butter and cheese for London (6). By stat. 36 Geo. 3. c. 86., it is provided that every

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(1) 55 Geo. 3. c. 176.

(2) Exparte Harrison, 1 Brown, 173. 1 T. R. 34. 7 East, 442. Cooke, 52. 1 Mont. Bpt. L. 10.

(3) Wells v. Parker, 1 T. R. 34. Cooke, 52.; but see Sutton v. Weeley, 7 East, 446.

(4) Sutton v. Weeley, 7 East, 443.

(5) Stoutfield's case, 2 Mod. 77. Bac. Abr. tit. Tithes.

(6) Burn, J. tit. Butter and Cheese. As to the butter trade in York, see 8 Geo. 1. c. 27. and in New Malton, 17 Geo. 2. c. 28.; and as to duties, see 56 Geo. 3. c. 25. and c. 26.; and as to the butter trade in Ireland, see 52 Geo. 3. c. 134. and 53 Geo. 3. c. 46.; and in Cork, see 53 Geo. 3. c. lxx.; and see 2 Burr. 1173. in which it was held that, under an

BUTTER AND CHEESE.

cooper or other person who shall make any vessel for the packing of butter, shall make the same of good and well seasoned timber, and tight and not leaky, and shall groove in the heads and bottoms thereof, and every such vessel shall be a tub, firkin, or half firkin, and no other, and shall, when delivered by such cooper or person making the same, be of the weight and proportion, and capable of containing the several quantities of butter herein-after mentioned, viz. every tub shall weigh of itself, including the top and bottom, not less than 11lbs. nor more than 15 lbs. avoirdupois weight, and neither such top nor bottom shall be more than five eighths of an inch thick in any part thereof, and shall be capable of containing 84lb. average of butter, and not less; every firkin shall weigh of itself including the top and bottom, not less than 7 lbs. nor more than 11 lbs., and neither the top nor bottom shall be more than four-eighths of an inch thick in any part, and it shall be capable of containing not less than 56lbs. of butter; and every half firkin shall weigh of itself including the top and bottom, not less than 4 lbs. nor more than 6 lbs., and neither the top nor bottom shall be more than three-eighths of an inch thick in any part, and it shall be capable of containing not less than 28 lbs. of butter, on pain of forfeiture by the cooper or other person making the same, of 10*s.* for every such vessel (1). The avoirdupois weight is that by which the sale of butter is regulated, and a custom in a particular place, that every pound of butter shall weight 18 ozs. is bad, being contrary to the express provisions of the legislature, the object of which is to establish a uniformity of weights and measures (2); but it has never been decided that a custom to sell by a lump of a particular weight exceeding 16 ounces is invalid in law. The statute requires also, that every such maker of vessels, before any vessel shall go out of his possession, shall on the outside of the bottom, with an iron, brand his christian and surname at full length in permanent and legible letters, together with the exact weight or tare thereof, on the like penalty (3). And every such maker shall moreover, mark in like manner, in addition to his name, his place

old statute, since repealed, exporting butter from Ireland to Lisbon, and thence to England, was not an importation into England from Ireland, no fraud being found; and see the 13 & 14 Car. 2. c. 26. and 4 W. & M. c. 7., in part repealed by 36 Geo. 3. c. 87. s. 19.; and see 9 Hen. 6. c. 8., an old act as to cheese. The existing provisions are stated in the text.

(1) 36 Geo. 3. c. 86. s. 1.

(2) Noble v. Durell, 3 Term Rep. 271. 4 T. R. 314. 750.

(3) 36 Geo. 3. c. 86. s. 2.

of abode or dwelling, in the following manner; viz. if he dwell in a city or market town, then the name thereof; if in a village, township, liberty, hamlet, or other division of a parish, then the name of the parish wherein the same is situate; and if in an extra-parochial place, then the name of the next adjoining parish, on pain of forfeiting 10s. for every default therein (1). And every factor or agent for buying or selling butter for others who shall buy, sell, or offer to sale, or have in his custody for sale, or shall order, consign, forward, or send any vessel containing butter for sale, which shall not be made and externally marked, and have the butter therein imprinted, according to law, shall forfeit 20s. (2). And every cheesemonger or seller, or dealer in butter on his own account, who shall offer for sale, or have in his possession for sale, any vessel containing such butter which shall not be externally marked as aforesaid, shall forfeit 10s. (3). As to the packing of butter, it is provided by the stat. 36 Geo. 3. c. 86., none of the provisions of which however extend to packing butter in any vessel not capable of containing more than £14 (4), that every dairyman or other person packing butter for sale, shall pack the same in vessels made and marked as just alluded to, and no other, and shall properly soak and season the vessels before packing; and when so soaked and seasoned, shall on the bottom thereof on the inside, and on the top on the outside, with an iron, brand his christian name and his surname at full length in permanent and legible letters, and also on the outside of the top and on the bouge or body thereof, the true weight or tare of the empty vessels when seasoned; and also his name in like manner on the bouge or body across two different staves at least, to prevent such staves from being taken out and changed; and also shall distinctly and at length imprint his christian name and surname upon the top of the butter contained in every such vessel when so filled, on pain of forfeiting £5 for every default thereof (5). A person packing butter for sale, is also required to pack in every tub not less than eighty-four pounds (exclusive of the tare of the cask), of good and merchantable butter; in a firkin, fifty-six pounds; in a half firkin twenty-eight pounds; and not to mix or pack up butter which is old or corrupt in any such vessel with that which is new and sound, nor weigh butter with that made of cream, but each sort of butter by itself; nor can

BUTTER AND CHEESE.

Packing of Butter.

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(1) 38 Geo. 3. c. 73. s. 1.
(2) Id. s. 2.
(3) Id. s. 3.
(4) 36 Geo. 3. c. 86. s. 16.
(5) 36 Geo. 3. c. 86. s. 3.

BUTTER AND CHEESE.

butter be lawfully salted with great salt but only with fine salt, nor any more be mixed with butter; penalty £5 (1). It is also required, that every cheesemonger, dealer in butter, or other person who shall sell any tub, firkin, or half firkin, shall deliver therein the full quantity aforesaid, and in default shall be liable to make satisfaction for what is wanting, to be recovered in an action on the case with costs (2). And if any change, alteration, fraud, or deceit shall be used or practised either in the vessel wherein butter is packed for sale as aforesaid, or in the butter itself, whether in quantity, quality, weight, or otherwise, or in any such brands or marks as aforesaid, or in the staves whereon the same shall be placed, or in any other manner howsoever after the packing thereof for sale as aforesaid, every person concerned therein shall forfeit £30 for every such offence (3). And no cheesemonger, dealer, or other person shall repack for sale any butter in any such vessel as aforesaid, on pain of forfeiting £5 for every tub, firkin, or half firkin so repacked (4). But no person is liable to penalties for using any such vessel (after the British butter packed therein has been taken out), for the repacking for sale any foreign butter, who shall first entirely cut out or efface the names of the original dairyman, farmer, or seller of butter, leaving the name and tare of the cooper, and the tare of the original dairyman, farmer, or seller thereon, and shall afterwards, with an iron, brand his name in words at length, and the words "foreign butter" in permanent and legible letters upon the bouge or body of of every such vessel, across two staves at the least, to denote that such butter is foreign butter (5). A penalty of £40 is imposed on counterfeiting or forging the names or marks above alluded to of the owners or farmers, or dairymen (6). All penalties above £5 are to be recovered in the courts at Westminster, and all offences against the act, the mode of determining which is not therein-before prescribed, and where the penalties do not exceed £5, are to be heard and determined by one justice of the county, &c. or place where the offences are committed, who, on proof upon oath by one witness, may levy such penalties by distress and sale of the offender's goods, returning the overplus, after deducting the costs, to be applied to the use of the informer; and for want of such distress, or if any penalty be not forthwith paid, the offender shall be

(1) 36 Geo. 3. c. 86. s. 4.
(2) 36 Geo. 3. c. 86. s. 6.
(3) Id. s. 5.
(4) Id. s. 7.
(5) 36 Geo. 3. c. 86. s. 8.
(6) Id. s. 9.

committed to the gaol or house of correction without bail for not exceeding three calendar months nor less than twenty-eight days, unless such penalty and all reasonable charges be sooner paid (1). A form of conviction is given, which is to be transmitted to the sessions; an appeal also lies to the sessions. The conviction is not to be quashed for want of form, nor is it removable by certiorari; the prosecution must be commenced within four months (2). In a case which occurred A. D. 1777, it was holden that an information *qui tam*, upon the old stat. 8 Geo. 1. c. 27., for a fraud in weighing and packing butter, exhibited in the sheriff's court at York, was removable into the King's Bench by writ of habeas corpus *cum causa* (3). With regard to the shipping of butter and cheese for London, it is provided, that every warehouseman, weigher, searcher, or shipper of butter and cheese, shall receive all butter and cheese brought to him for the London cheesemongers, and ship the same without undue preference, and shall have for his pains 2*s*. 6*d*. for every load; and if he make default, he shall, on conviction before one justice on oath of one witness, or confession, forfeit for every firkin of butter 10*s*., and for every weigh of cheese 5*s*., half to the churchwardens and overseers for the use of the poor, and half to the informer, to be levied by the constable by distress and sale (4); and he shall also keep a book of entry of receiving and shipping the goods, on pain of forfeiting 2*s*. 6*d*. for every firkin of butter and weigh of cheese, to be levied and applied in like manner, and for want of distress to be committed till paid (5). A master of a ship refusing to take in butter or cheese before he is fully laden (except it be a cheesemonger's own ship sent for his own goods), (6) shall forfeit for every firkin of butter refused 5*s*., and for every weigh of cheese 2*s*. 6*d*., to be levied and applied in like manner (7). Persons aggrieved by the determination of the justice, may appeal to the next sessions, giving £20 bond with one or more sureties, to the party to pay costs (within a month after), if he is not relieved on his appeal (8). But this act shall not extend to any warehouse in Cheshire or Lancashire. (9)

BUTTER AND CHEESE.

(1) 36 Geo. 3. c. 86. s. 10, 14. 38 Geo. 3. c. 73. s. 4.
(2) 36 Geo. 3. c. 86. s. 11, 12, 13.
(3) Hartley v. Hooker, Cowp. 523.
(4) 4 W. & M. c. 7. s. 4.
(5) Id. s. 5.
(6) Id. s. 8.
(7) Id. s. 6.
(8) Id. s. 10.
(9) Id. s. 9.

BUTTONS.

Foreign Buttons, and Penalties.

The statutes relative to the making of *buttons* relate either, 1st, to foreign buttons, or, 2dly, to such as are made of wood; or, 3dly, to cloth buttons; or, 4thly, to metal buttons. 1. All *foreign* buttons are prohibited, and a penalty of £50, besides the forfeiture of the goods, is incurred by offering them to sale; and the importer of them forfeits £100, besides the goods themselves; half to the king, and half to the informer (1). And the statute provides, that on complaint and information given to a justice of the peace, at reasonable times, he shall issue his warrant to the constable to enter and search for such manufactures in the shops, being open, or warehouses or dwelling-houses of persons suspected to have any such foreign goods, and to seize the same (2).

Wooden Buttons.

2. No person shall make, sell, or set on any buttons made of *wood* only, and turned in imitation of other buttons, on pain of forfeiting 40*s*. a dozen; half to the king, and half to him who shall sue in any court of record. An information having been exhibited against a defendant for making wooden buttons contrary to the statute, a special verdict was found, that all the button was of wood, but that there was in it a shank of wire; and, after argument, judgment was given for the king, namely, that this was a button of wood, notwithstanding the shank, which is no essential part of the button; for buttons of silk and hair have no shanks (3).

Buttons of Serge or other Stuff.

3 By the 8 Ann. c. 6. it is further provided, that no person shall make, sell, set on, or use, on any clothes, any buttons or button-holes made of or bound with serge, drugget, frize, camlet, or any other stuffs of which clothes are usually made, on pain of forfeiting £5 for every dozen; half to the king, and half to him who shall sue in any court of record; or, on complaint to two justices where the matter arises, they may summon witnesses, and levy the penalty, returning the overplus; and persons aggrieved by their judgment or order may appeal to the next general quarter sessions (4). So by the 4 Geo. 1. c. 7. it is enacted, that no person shall make, sell, set on, use, or bind, on any clothes (except those made of velvet) (5), any buttons or button-holes made of or used or bound with cloth, serge, drugget, frize, camlet, or

(1) 13 & 14 C. 2. c. 13. s. 2. 4 W. & M. c. 10. s. 2.

(2) 13 & 14 C. 2. c. 13. s. 3. 4 W. & M. c. 10. s. 3.

(3) R. v. Roberts, 1 Ld. Raym. 712.

(4) 8 Ann. c. 6.; and see the stat. 10 W. & M. c. 2. Penalty 40s. a dozen, half to the king, and half to prosecutor, in court of record.

(5) 4 G. 1. c. 7. s. 2.

any stuffs that clothes are usually made of, on pain of 40*s.* for every dozen of such buttons and button-holes, or in proportion for any less quantity (1), to be determined by one justice, where the offence shall be discovered or the offender shall inhabit, on oath of one witness, in three months after the offence committed (2), and to be distributed (charges of conviction first deducted) half to the informer, and half to the poor of the parish or place where the offence shall be discovered; if not paid (being lawfully demanded) in fourteen days after conviction, the justice shall issue his warrant to the constable where the offender dwells or can be found, to levy it by distress and sale; and where no sufficient distress can be found, he shall be committed to the common gaol of the county or place where he shall be found, to be kept to hard labour for three calendar months (3). Clothes exposed to sale with such buttons and button-holes may be seized, and recovered and disposed of as other forfeitures under the statute (4). And the statute declares, although rather unnecessarily, that the same provisions shall extend to persons being in a gaol or house of correction, or who shall dwell within the rules or liberties thereof, or in any other privileged place (5). Tailors or other persons causing their apprentices or servants to make such clothes, subject themselves to the penalties of this act (6). And persons sued for acting under its provisions may plead the general issue, and give the special matter in evidence; and if the plaintiff be nonsuited, or discontinue, or a verdict pass against him, the defendant is to recover treble costs (7). The statutes also require that no person shall *use or wear*, on any clothes (velvet excepted) (8), any such buttons or button-holes, on pain of forfeiting 40*s.* for every dozen of such buttons or button-holes, or in the like proportion for every less quantity (9); and any justice of the peace where the offence shall be committed, or the offender shall inhabit, shall, on complaint or information on oath of any credible person (in one month after the offence committed) (10), summon the party accused, and, on his appearance or contempt, examine the matter, and on due proof, by confession or oath of one witness, convict the offender; and on refusal to pay when demanded, at the time appointed by the justice, cause the forfeiture to be levied, by his warrant, by

BUTTONS.

Using or wearing Cloth Buttons.

(1) 4 Geo. 1. c. 7. s. 1.
(2) Id. s. 4.
(3) Id. s. 5.
(4) Id. s. 8.
(5) Id. s. 3.
(6) Id. s. 9.
(7) Id. s. 7.
(8) 7 Geo. 1. st. 1. c. 12. s. 5.
(9) Id. s. 1.
(10) Id. s. 4.

BUTTONS.

distress and sale, and the overplus to be returned, one moiety of the penalty to him on whose oath (1) the party shall be convicted, and the other moiety to the poor of the parish (2). An appeal lies to the sessions after eight days' notice given (3).

Metal Buttons.

4. The first, and indeed the only act of parliament to regulate the manufacture of metal buttons, was passed in the year 1796 (4). All the other statutes that have been mentioned (5) were passed for employing and encouraging the consumption of raw silk and mohair yarn (6). At the time of passing the 39 Geo. 3., the manufacture and sale of metal buttons had been for many years a great branch of trade in this kingdom; but the increase of the manufacture had been greatly impeded by the fraudulent practice of marking buttons as "gilt" or "plated," which, in fact, were not so, to the great injury of the purchaser and of the fair trader. A statute was therefore passed to regulate the sale of metal buttons; it does not extend, however, to such as are made of gold, silver, tin, pewter, lead, or mixtures of tin and lead, or iron tinned, or of the mixed metals called Bath metal or white metal, or of either of those metals inlaid with steel, or buttons plated upon shell or shells (7). This statute enacts, that no person who shall order metal buttons from any manufacturer or maker thereof, shall direct the words "gilt" or "plated," or any other word, letter, figure, mark, or device, indicating the quality, to be marked on any part thereof; nor any word or device, whether the same do or do not indicate the quality, to be marked on the under side, without at the same time ordering such buttons to be gilt with gold, or plated with silver; and that no person shall procure or purchase metal buttons so falsely marked, knowing the same not to be gilt or plated, on pain of forfeiting the buttons; and also £5 for any quantity exceeding one dozen, and not exceeding twelve dozen; and if above, after the rate of £1 for every twelve dozen (8); and also, that no person shall make any such marks on buttons, unless they are *bonâ fide* plated with silver, or afterwards gilt with gold, or destroyed before being sold; nor place upon any such buttons having the word "gilt" or "plated," or any other mark indicating the quality, on any part thereof (nor on the under-

(1) This is rather an anomalous provision.

(2) 7 Geo. 1. st. 1. c. 12. s. 2.

(3) Id. s. 3.

(4) 39 Geo. 3. c. 60.

(5) 8 Anne, c. 6. 4 Geo. 1. c. 7. 4 & 5 W. & M. c. 10. 10 W. 3. c. 2. 7 Geo. 1. st. 1. c. 12.

(6) See 7 Geo. 1. st. 1. c. 12.

(7) 36 Geo. 3. c. 60. s. 20.

(8) Id. c. 60. s. 1.

side, whether the same do or do not indicate the quality), any ornament, unless those parts not covered thereby be *bonâ fide* plated or gilt before the ornament is put on; nor shall any person pack for sale on any card, paper, or other substance, or sell or expose to sale any metal buttons not being gilt or plated, if the words "gilt" or "plated," or any other word or device as aforesaid indicating the quality, be marked or printed thereon, or upon such card (not being the pattern card), paper, or other substance, (or on the underside of such buttons, whether the same do or do not indicate the quality), knowing the same not to be so gilt or plated, on pain of forfeiting in every such case such buttons, and also £5 for any quantity exceeding one dozen and not exceeding twelve dozen; and if above twelve dozen, after the rate of £1 for every twelve dozen (1). A conviction, charging that the defendant unlawfully and fraudulently placed on cards for sale metal buttons marked with the word gilt, whereas the same were not gilt, contrary to the form of the statute, is bad, for want of an express charge that he acted knowingly, the legislature having made knowledge an essential ingredient in the offence (2), and also on account of its omitting to negative the exception with respect to *pattern cards* (3); and it was held (4), that these defects were matter of substance, and not of form, and therefore might be taken advantage of on a removal of the conviction by *certiorari* into the court of king's bench (5). The like penalties are also imposed upon persons printing or stamping upon metal buttons *any thing* to indicate the quality, except the words "gilt" or "plated;" or putting or packing for sale on any cards (except the pattern cards), or selling or exposing to sale metal buttons having any other mark to indicate the quality (6). The act does not extend to prevent persons marking the words "double gilt" on metal buttons, or packing for or offering to sale buttons so marked, provided continually, from the time of gilding them, gold shall remain equally spread upon the upper surface of the buttons, exclusively of the edges, in the proportion of ten grains to such quantity of the buttons, the upper surfaces of which, exclusive of the edges, shall measure or be equal to the superficies of a circle twelve inches in diameter; or the words "treble gilt,"

BUTTONS.

(1) 36 Geo. 3. c. 60. s. 2.
(2) Rex v. Jukes and others, 8 Term R. 536.
(3) Rex v. Jukes and others, 8 Term R. 542.
(4) Id.
(5) Id. ibid.
(6) s. 3.

BUTTONS. where gold shall remain in the proportion of fifteen grains to the same superficies (1). The proportion of gold upon buttons single gilt is five grains upon a like superficies, exclusive of the edges; and it is provided, that no metal buttons shall be deemed or taken to be plated buttons, unless the area or superficies of the upper surface of the same be made of a plate of silver, put upon copper, or a mixture of copper with other metals, previous to such plate of silver and copper, or mixture of copper with other metals, being rolled into sheets or fillets (2). The act also provides, that no persons shall knowingly place or intermix any metal buttons not *bonâ fide* gilt or plated upon any cards (except pattern cards), or with buttons so gilt or plated intermix the same in any other manner, on pain of forfeiting such buttons, and also £5 for any quantity exceeding one dozen, and not exceeding twelve dozen; and if exceeding twelve dozen, at the rate of £1 for every twelve dozen (3). The penalty of £20 is also imposed upon any person who shall knowingly make out, send, or deliver any list, bill of parcels, or invoice, for or in relation to any metal buttons, expressing therein any other than the real quality of such buttons (4). An *indemnity* is extended by the 36 Geo. 3. to a person liable to penalties, who, before information or complaint against him, discovers to two or more justices the name or names of a person by whose order, direction, or procurement he has done the unlawful act, so that the primary offender may be prosecuted to conviction; in this case the disclosing party is not liable to punishment, but is entitled to a moiety of the penalty as any other informer (5). So, if a manufacturer who has ordered metal buttons to be gilded, prove before two justices of the peace where the gilder resides, or the offence was committed, that he ordered the buttons to be gilt in the mode required by the act, and delivered a quantity of gold sufficient for the purpose, or paid or contracted to pay a proper sum of money for the business, and if he afterwards prosecute the gilder to conviction he is also indemnified. (6)

Any justice of the peace of the place where the offence is committed, or the offender resides, may by warrant cause such metal buttons as shall be liable to forfeiture under this act to be seized,

(1) 36 Geo. 3. c. 60. s. 4.
(2) s. 7.
(3) s. 6. supra p. 304.
(4) s. 5.
(5) s. 18.
(6) s. 19.

and to keep them in safe custody for the purpose of producing the same in evidence upon any prosecution or action, and when no further necessary, such justices shall order such buttons to be destroyed (1). And two justices where any offender shall reside, or where any offence shall be committed, may hear and determine the same, who on information or complaint within three calendar months (2), shall summon the party accused and witnesses on each side, and examine into the facts, and on proof, either by confession or on oath of one credible witness, shall give judgment for the pecuniary penalty, with costs to be allowed by such justices; and shall levy the same by distress, and cause sale thereof, if not redeemed within five days, inclusive of the day of seizure; half to the informer or party suing, and half to the poor (3); and for want of sufficient distress, shall commit such offender to gaol where the information shall be laid, for any time not exceeding three calendar months, unless such penalty and costs be sooner paid (4). And if any person shall think himself aggrieved by the judgment of such justices, he may (on giving security, with sufficient surety to the amount of such penalty and costs, together with such further costs as shall be awarded, in case such judgment be affirmed) appeal to the next sessions where such conviction shall be made, who may summon and examine witnesses, and hear and finally determine the same, and award costs, as they shall think reasonable (5). The penalties may be reduced, but not below one half, and where they are less than £40 below £20 (6). A form of conviction is given by the act, to be used in every case *mutatis mutandis*, without stating the facts or the proof with particularity; it is not to be set aside for want of form or mistake, provided the material facts alleged are proved to the satisfaction of the court. But the clause which directs that an appeal may be made to the sessions, and that they shall hear and finally determine the matter, does not preclude the defendant from removing the proceedings into the king's bench by writ of *certiorari*, which being a common law process for the benefit of the subject, cannot be taken away without express words. And the section which cures objections in point of form does not apply to matters of substance, as to the defendant's knowledge of the facts, where the legislature has made that an

BUTTONS.

(1) 36 Geo. 3. c. 60. s. 14.
(2) s. 15.
(3) s. 16.
(4) 36 Geo. 3. c. 60. s. 8. Burn, J., tit. Buttons.
(5) Id. s. 9.
(6) Id. s. 10.

BUTTONS. ingredient in the offence, or to an omission to notice words of exception introduced by the enacting clause of the statute. The material facts which constitute the offence must still be set forth in the information and conviction, or the proceedings will be invalid (1). Witnesses not appearing, having been duly summoned, without reasonable excuse, to be allowed by justices, or refusing to be examined upon oath, forfeit £5 (2). An inhabitant of the place may be a witness. A suit commenced for any thing done under the act must be brought within six calendar months. (3)

CANDLES. In considering the excise laws, most of the provisions which regulate the makers of *candles* were noticed. The obligations imposed upon a chandler, or maker of candles for sale, to take out a license (4), to give notice at the excise office of his workhouses or storehouses, &c. (5), to allow the officers to enter and take account and weigh, &c. (6), have been already considered, and form the prominent regulations by which the conduct of a dealer in such articles is to be guided. By the stat. 8 Ann. c. 9. s. 18. it is enacted, that no person shall expose to sale any candles except in his public shop or warehouse, or in a public fair or market, on pain of forfeiting £5. And no person residing within the limits of the head office will be allowed to make candles unless he occupy a tenement of £10 a year, and for which he shall be assessed in his own name, and shall also pay to the parish rates, nor will he be allowed to make them in any other place unless he be assessed and pay to church and poor in the place of his residence; and no entry at the excise is valid unless the maker possess this qualification; a provision, which was intended doubtless to secure the revenue, by preventing

(1) The King v. Jukes, 8 T. R. 541.

(2) 36 Geo. 3. c. 60. s. 13.

(3) 36 Geo. 3. c. 60. s. 21.

(4) Ante 1 vol. 838. and stat. note 4.; if not wax, £1 by 43 Geo. 3. c. 69.; and further, £1 by 55 Geo. 3. c. 30. continued till 1822 by 59 Geo. 3. c. 52., ante 1 vol. 850.; and for making wax or sperm, £6 licence; and for dealing in or selling, 10s. 6d., and by 55 Geo. 3. c. 30. 10s. 6d. additional; nor maker need also be licensed as seller, 24 Geo. 3. c. 41. s. 14. The provisions as to one licence for one firm, time of taking it out, &c. ante 1 vol. 837. 839.; transfer to executors, id. note 5, also of course apply. See also 1 vol. 824, 5.

(5) Ante 1 vol. 840, n. 4., and see as to tallow-melters not being entered candle-makers, and £200 penalty, 59 Geo. 3. c. 90. s. 7. and notice of making candles, &c. by 10 Ann. c. 26.; 11 Geo. 1. c. 30.; 24 Geo. 3. c. 111.; 25 Geo. 3. c. 74.; 26 Geo. 3. c. 77.

(6) Ante 1 vol. 846. 1 Stra. 608. cited 8 T. R. 542, 3.

persons in extreme indigence from setting up in trade, and was founded in part on the consideration, that a person who supplied the public with an article of so general consumption might with great propriety be expected to contribute his share to the maintenance of the poor. (1)

CANDLES.

CARDS AND DICE.

The dealers in *cards and dice* are regulated by various legislative provisions; the chief object of the enactment of which has been to secure the revenue from a fraudulent evasion of the duties imposed upon them (2). Dice, chargeable as such with duties, are declared by the statute of Queen Anne, to be all pieces of ivory, bone, or other matter, made or used for any play, with any letters, figures, spots, or other marks thereupon, to denote any chance (3); and if there be more than six chances on any one piece, it shall be charged with a distinct duty, and an additional duty is imposed where the number of chances is greater than is usual in a pair of dice.

Notice of places of making, &c.

All makers must give notice in writing of the place of making to the next stamp office, on pain of forfeiture of £50. The same penalty is imposed upon any person making them in a place not notified. And persons refusing to suffer officers to enter such places, and take an account of the cards and dice, forfeit £10. No maker of cards or dice shall suffer the same to be removed from the place of making, until such mark upon the dice, and such seal upon the paper and thread inclosing every pack of cards, shall be put thereon as the commissioners shall appoint, upon pain of forfeiting all such cards and dice, and treble the value (4). And if any person shall make cards or dice in any place before he shall have given such notice, he shall, over and above the said penalties, forfeit all the cards and dice and utensils which shall be found in such place, or shall have been made there; and no materials begun to be wrought for making cards or dice shall be removed until the same shall have been completely made, or the duties paid or secured, upon pain of forfeiting double the duty with costs (5). If the commissioners

(1) 25 G. 3. c. 74. s. 25.

(2) The duty on each pack of cards made for use or sale in Great Britain is 2s. 6d., and on every pair of dice made for sale or use in Great Britain, £1. 44 Geo. 3. c. 98. & See 1 Burn, J. p. 435. On cards and dice imported, £2. 8s. duty, see post.

(3) 10 Anne, c. 19. s. 168. See William, J., tit. Stamps, 4 vol. 627.

(4) 9 Ann, c. 23. s. 41.

(5) 10 Anne, c. 19. s. 166.

CARDS AND DICE.

Searching in suspected places.

of stamp duties have cause to suspect that persons make cards or dice in any place without sending notice, and affidavit be made thereof before any justice of the peace, declaring the ground of suspicion, any officer of the duties on cards and dice may, in the day-time, in the presence of a constable or other peace-officer, by warrant from such justice, break open such place, and seize all cards, dice, tools, or materials there found, and detain the same as the commissioners shall direct; and if within five days they be not claimed and replevied by the owners, they shall be forfeited, and may be sold by direction of the commissioners; one moiety of the produce (charges deducted) to go to the king, and the other to the informer. (1)

Every maker of playing cards shall send to the commissioners or their officers a sufficient quantity of paper, to have as many aces of spades marked thereon as such maker shall desire, and every pack shall have one such ace so marked; and the commissioners shall cause a stamp to be prepared, with such device as they think proper, to denote the said ace, as well in every pack made for use or play in Great Britain as for exportation, so as that in such device there be some distinguishing mark between cards for home and cards for foreign consumption (2). And every maker shall send to the commissioners, or their officers, jews or wrappers made for inclosing cards for use or play in Great Britain, with his name, and any other particular word or thing printed thereon as the commissioners shall direct, in order that the same may be stamped and delivered again to such maker, and the commissioners shall denote one of the sixpenny duties on such jew or wrapper (3). The commissioners of stamps are required to cause dice to be inclosed, after they have been stamped, in a paper wrapper marked for the purpose, and fastened with a thread or seal, and, if requested, with the maker's name (4). Separate accounts are to be kept by the proper officer with every card maker, to be made out from the number of aces and jews or wrappers delivered; and the maker must once in every twenty-eight days attend at the stamp office, or on the next distributor of stamps, and settle and sign the same;

Settling accounts for stamps.

(1) 6 Geo. 1. c. 21. s. 59. In Burn, J., tit. Cards and Dice, this section is quoted as the only one on this subject which gives power to justices of the peace to act.

(2) 5 G. 3. c. 46. s. 2.

(3) Id. s. 10.

(4) 41 Geo. 3. c. 86. s. 4.

CARDS AND DICE.

and if any difference arise in settling such accounts, he is immediately, or within one week after, if he carries on trade within ten miles of London, and if at a greater distance, then within twenty days, to apply to the commissioners to settle the same, whose determination is final (1). But if any pack of cards happen to be damaged in the making, then on oath thereof the maker is to be allowed another ace of spades instead of the ace damaged or spoiled, on delivering up the damaged one (2). And the makers of dice shall once in every twenty-eight days make entry upon oath with the commissioners, or their officer next adjacent, of all the dice made within that time (3). And at the time of entering, a bond is to be given to the king, with sureties in treble the duty, for payment of the same in six weeks (4). Makers of cards and dice shall once in six weeks clear all the duties, on pain of forfeiting £20 for every default in making entry, and double the duty for nonpayment (5). And any maker of cards or dice, endeavouring to defraud by concealment, shall forfeit £20. (6) No playing cards or dice shall be sold or exposed to sale, or used in play in any public gaming house, unless the paper and thread which shall have inclosed the same shall have been sealed and stamped, and unless one of the cards of each pack so sold be stamped on the spotted side, upon pain of forfeiting for every pack of cards and every one of such dice £10, besides costs, to be recovered and distributed as the penalties relating to the duties on cards and dice (7). And it shall be lawful for any officer for the stamp duties to enter into any place where cards or dice shall be made or exposed to sale, or suspected to be privately made, or into any public gaming place, and there search what quantity of cards or dice shall be making, and whether the cards or dice exposed to sale or used in play be duly stamped; and if the occupier of any place where cards or dice are made or exposed to sale, or if any such public gaming house shall refuse entrance or liberty of search to such officers, such occupier shall forfeit £10 with costs as aforesaid (8). And if any person shall fraudulently get off any stamp in respect whereof duties are payable on playing

Not to sell without being stamped.

(1) 41 Geo. 3. c. 86. s. 11.
(2) Id. s. 12.
(3) 9 Ann. c. 23. s. 42.
(4) 6 Geo. 1. c. 21. s. 57. If duty paid at time, like allowance as for present payment of stamp duties, s. 58. 44 Geo. 3. c. 98. sched. C.
(5) 9 Anne, c. 23. s. 42.
(6) Id. s. 43.
(7) 41 Geo. 3. c. 86. s. 10.
(8) Id. s. 169.

*Cards and Dice.*

cards, or shall file or new spot dice which have been sold or played with, or shall fraudulently inclose playing cards in any outside paper sealed or stamped, the same having been once made use of for that purpose, or shall sell or expose to sale any playing cards not stamped on the spotted side, and inclosed in paper and thread sealed or stamped, every person so offending shall forfeit £10, to be recovered with costs in any court at Westminster; one moiety to the king, the other to the informer (1). If any maker shall use in the making up any pack of cards any ace of spades, jew, or wrapper used before, he shall forfeit £20 (2). And by 12 G. 3. c. 48., taking off the stamp of any playing cards or outside paper with intent to use the same again, is felony, and transportation for seven years (3). And any person buying or selling any cover or label before made use of for denoting the duty payable on cards, or any ace of spades, jew, or wrapper, in order to be made use of for inclosing any pack of cards, shall forfeit £20 (4). But the buyer or seller informing against the other, shall be permitted to give evidence, and be indemnified against the penalties so incurred (5). And whoever shall sell any cards (by way of second-hand cards) after the wrapper or cover in which the same have been inclosed and tied shall have been broke open, unless he shall before such sale mark the back or plain side of every painted or pictured card in such manner as to render the same unfit to be used in play, shall for every pack forfeit £5 (6).

*Exportation.*

Any cards or dice may be removed from the place where they are made, without being stamped or paying the duties, provided that within one month after being made, and before they are removed, a bond be entered into to the king with surety in a penal sum of double the duties, with condition for the *exporting* such cards or dice beyond the seas within a limited time, and that the same shall not be relanded in Great Britain; such bond to be left in the hands of the commissioners, and a certificate given by them, or such officer as shall be appointed, that such bond is entered into (7). But the bond so entered into shall not be vacated or delivered up until proof made that

(1) 6 Geo. 1. c. 21. s. 55.
(2) 5 Geo. 3. c. 46. s. 13.
(3) 12 Geo. 3. c. 48.
(4) 29 Geo. 3. c. 13. s. 8. 5 Geo. 3. c. 46. s. 14.
(5) Id. s. 9. id. s. 15.
(6) 16 Geo. 3. c. 34. s. 19.; and see the 29 Geo. 2. c. 13. s. 10. imposing a penalty of £20 for this offence.
(7) 10 Ann. c. 19. s. 170. Upon every dozen packs of cards *imported*, a duty is imposed of £2. 8s.

they have been entered and shipped for exportation as cards and dice, and not as stationary wares, and until a certificate of such entry and shipping signed by the proper officers of the customs be produced (1). All playing cards made for exportation are, before they are packed up for exportation, to be inclosed in paper and thread in packs or parcels, in such manner as the commissioners may direct, to distinguish them from other cards; and one card in every pack for exportation, or so many cards as the commissioners may direct, must be duly stamped on the spotted side with a mark appointed by the commissioners; and if any person utter to be used within Great Britain, or use or permit to be used within any public gaming-house, any playing cards so stamped and distinguished as cards for exportation, he shall forfeit £20 for every pack (2). No playing cards or dice can be exported without being stamped, until after ten days previous notice given at the head office of stamps, by the makers thereof, of the quantity, the port or place from whence and the port or place whither the same are intended to be exported, nor until a certificate of such matters be delivered to the proper officer of the customs, nor can any be laden or shipped but in the presence of such officer of customs (3); but they may be removed from the place of making without payment of duties, provided they are duly marked for exportation, and a bond in treble the probable amount of duty be first entered into (4). If any person shall reland or cause to be relanded any parcel of cards, after being entered and shipped for exportation, he shall forfeit £50 (5). But if a person concerned in such relanding inform against another party concerned, he shall be admitted to give evidence, and be indemnified against all penalties (6). And all cards or dice exported contrary to such provisions, or relanded after entry thereof for exportation, or which after such entry shall be found in any unentered place, or found removing from place to place without being stamped (except for exportation) shall be forfeited. (7)

CARDS AND DICE.

A person carrying on the trade of a *coachmaker* is required to take out an annual licence (8). An annual duty is payable by

COACHES AND CARRIAGES.

(1) 29 Geo. 2. c. 13. s. 7.
(2) 29 Geo. 2. c. 13. s. 6.
(3) 41 Geo. 3. c. 86. s. 5.
(4) 41 Geo. 3. c. 86. s. 6.
(5) 5 Geo. 3. c. 46. s. 16.
(6) Id. s. 17.
(7) 41 Geo. 3. c. 86. s. 9.
(8) 25 Geo. 3. c. 49. s. 20; and various regulations as to mode of taking out, s. 1 to 11.

COACHES AND CARRIAGES.

Duties on makers and venders, and return of lists to assessors, &c.

every maker of carriages charged with duty. A further duty on every maker or dealer, for every carriage with four wheels made or sold by him; a different duty where the carriage has less than four wheels (1). Other duties are also payable by the makers of or dealers in taxed carts (2). Other duties are also payable by persons selling carriages, chargeable with duty, by auction or commission (3). To insure the payment of these duties, it is required by the statute 43 Geo. 3. c. 161. that every person who shall have kept any carriage, or used the business of a coachmaker, or seller of carriages by auction or on commission, in the course of the year ending on the day previous to the commencement of the duty in 1804, shall, within six weeks thereafter, whether upon notice or not, cause to be prepared true and particular lists in writing, signed by him or on his behalf, containing the parish or place where he shall then or usually reside, and also the greatest number of carriages described in the schedules kept by such person at any one time within such period by its usual name; the particular kind of such carriage by which the body or bodies are usually called, or known and distinguished; the number of such carriages with four wheels from the number of those with less than four wheels; and also the number of bodies of such carriages which shall successively have been used on the same carriage or number of wheels; and also the number of such carriages liable as taxed carts: and another list, if the same shall be returned by any coachmaker or maker of carriages, or by any seller of such carriages by auction or on commission, shall contain the place where such trade shall be carried on; and every such person shall cause such lists to be delivered to the assessor or assessors, or to be left at his or their dwelling house or houses, or one of them, at or before the expiration of the above limited time for such delivery; and any person who shall have kept or used any carriages, shall be charged for the greatest number thereof kept or used by him at any one time within the year ending as aforesaid; and every person who shall have used the business of a coachmaker, or maker of carriages, or of a seller of carriages by auction or on com-

(1) 48 Geo. 3. c. 55. sched. D. No. 5. 52 Geo. 3. c. 93. sched. D. No. 5.; and particular regulations there mentioned, which see in Burn's, William's, and Dickenson's Just., tit. Taxes.

(2) 50 Geo. 3. c. 104. 52 Geo. 3. c. 93. sched. D. No. 5.

(3) Sched. D. No. 6. 48 Geo. 3. c. 55. and 52 Geo. 3. c. 98.

mission, shall be assessed for the year commencing from that day at the rate specified in the schedules, and according to the lists which shall or ought to have been returned as aforesaid, subject to the power of surcharge as given by the act (1). If any person shall keep carriages at any place where he shall have no fixed residence, or come to reside in any district after the time for returning the lists before mentioned, not being charged therein, the assessor, surveyor, or inspector of the district shall, in every case within his knowledge, at any time deliver or leave the notices before directed at the house where such persons shall be, or such carriages shall be kept. And such person, or the person having the charge of such carriages, shall cause such lists (being previously signed by them as aforesaid) to be delivered to such assessor, &c. within twenty-one days after the delivery of such notice; and shall also deliver a declaration where they or the persons to whom such carriages do belong have been assessed for that year to the duties hereby imposed, together with their respective places of abode, and the names of such persons; or in case no assessment, or no sufficient assessment has been made, then where they have delivered lists, in order to be assessed. And in case the parties have not been duly or sufficiently assessed, or shall not have made any return, they shall be chargeable to the duties hereby made payable, and for which returns ought to be made either in the parish or place where such last mentioned notice shall have been delivered, as if such person was actually resident therein, or in the parish or place where such persons shall have their place of ordinary residence. And if any person after receipt of such notice shall remove without having delivered such list and declaration, he shall forfeit £50 (2). Every maker of coaches or carriages shall enter in a book (3) the number and kinds of carriages by him built for sale, distinguishing the number of the wheels of each, and the number sold, the names and places of abode of the persons to whom sold, and the day on which each carriage was delivered, or sent out of his shop or warehouse. And every seller of carriages by auction or commission shall enter in a book the number and kinds of carriages sold by him, distinguishing the number of wheels of each, and the days on which such carriages were sold respectively; which books shall at all reasonable times in the day be inspected by the assessors, surveyor, or inspectors of the

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(1) 43 Geo. 3. c. 161. s. 27.
(2) Id. s. 39.
(3) Vide ante 1 vol. 842.

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place where such person shall reside. And every such person shall, within 20 days after the 5th of July, and the 5th of Oct. 1804, and within twenty days after the 5th of January and the 5th of April, the 5th of July and the 5th of October, in every subsequent year, deliver a true copy in writing, of every entry made in such book during each preceding quarter, to the assessors, for the use of the inspector or surveyor, or to such surveyor or inspector himself; and, when required by such surveyor or inspector, every such person, or his chief servant, manager, or workman, shall make oath or affirmation of the truth of such account, every copy of which shall, to the best of his knowledge or belief, express the Christian and surname of every person therein required to be entered, and the place of his usual residence, on pain of forfeiting £50 for neglecting to keep such account or to deliver such copy thereof, or for wilfully omitting any description that ought to be inserted therein (1). And forms for entering such accounts shall be prepared by the commissioners of taxes, and issued to every person applying for the same, and leaving his name and place of abode in writing at the tax-office, or with any surveyor of the district where such applicant shall reside. And, at the end of the year, every such account shall (all such entries being required to be first duly made) be signed by the party, with his own proper name, in his usual manner of writing, and returned in like manner as aforesaid. And in default of such application, the party shall provide, fill up, sign, and deliver the proper forms to the assessor, surveyor, or inspector, in like manner, on pain of forfeiting £50 for neglecting to deliver up such accounts within the time limited (2). And the assessor, surveyor, or inspector, to whom such account shall be delivered by any coachmaker or seller of carriages, shall return to the commissioners a certificate of the number of such carriages, of the several descriptions herein mentioned, by such persons respectively built or sold within the period of such account, and the amount of duty chargeable thereon; and the said commissioners shall cause an assessment to be made on the amount contained in each certificate, and added to the assessment of the other duties charged in the same parish or place, and shall cause the same to be inserted in the collector's duplicate, who shall demand and collect the same at the same times, and under the same warrant as the

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(1) 43 Geo. 3. c. 161. s. 43. (2) Id. s. 44.

other duties (1). And by the statute 50 Geo. 3. c. 104. every maker of any carriage called a taxed cart, built and constructed according to the regulations of the 48 Geo. 3. c. 55., or of that act, for sale, shall cause his name and place of abode, and the places where such business shall be carried on, to be returned to the commissioners, in like manner as required to be done by makers for sale of other carriages chargeable with duty, and under the like penalty; and every such maker shall also, from time to time, enter in a book the number of such carriages built or constructed for sale as taxed carts, and the names and places of abode of the persons to whom sold, and the full value, together with the full and just price, or other consideration, for the same, and the day on which each carriage was delivered or sent out; all which books shall, at all reasonable times in the day-time, be open to the inspection of the assessor or collector, surveyor, or inspector for the place where the maker resides; and every person required to enter and keep such account, shall, within twenty-one days after 10th October and 5th April in every year, deliver a true copy of every entry made within the previous half-year, to the assessors or collectors of the ward, &c. where the maker resides; and when required to do so by such surveyor or inspector, every such maker, his chief servant, workman, or manager, shall make oath or affirmation of the truth of such account, according to the best of his knowledge and belief; and if any maker neglect to keep such account, or to deliver such copy, or wilfully omit any thing, or make any false entry, he shall forfeit a sum not exceeding £20 (2). By the same statute, every maker of taxed carts for sale shall, before delivery to the purchaser, cause the name and place of abode of the purchaser, and the words "a taxed cart," and also the name and place of abode of the maker, and the full value or the actual price, to be painted in a conspicuous part of the outside of the back part of the carriage, in words at length, and in Roman characters, in black letters on a white ground, or white letters on a black ground, each of the letters being at least one inch in length, and of a proportionate breadth; in default whereof a penalty of £20 is incurred by the maker or user of the carts. (3)

COACHES AND CARRIAGES.

Names, &c. on taxed carts.

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(1) 43 Geo. 3. c. 161. s. 45.
(2) 50 Geo. 3. c. 104. s. 4.
(3) 50 Geo. 3. c. 104. s. 5.

In the various regulations connected with these duties see the statutes and the schedules thereto.

CORDAGE.

The manufacture of *cordage* for shipping is regulated by 25 Geo. 3. c. 56., by which the previous act of 35 Eliz. c. 8. is repealed, and new regulations entered into for preventing the frauds and deceits practised in the making of this important article. The 25 Geo. 3. provides that no person shall use, in the making of cables, hawsers, or other ropes for the use of shipping, or knowingly sell the same, in the manufacturing whereof there shall be used any hemp usually known by the names of short chucking, half clean, whale line, or other toppings, cordilla, damaged hemp bought at sales, or any hemp from which the staple part has been taken away by the manufacturer, on pain of forfeiting (if he be the manufacturer thereof) such cable, hawser, or other rope, and treble the value thereof, and the vendor thereof knowingly, and not being the manufacturer, treble value (1). And for better distinguishing the quality of cables and ropes for shipping, it is required that whenever they shall be manufactured in whole or in part of any hemp inferior to clean Petersburgh hemp, the same shall be deemed inferior cordage, and the maker shall distinguish it by running into the same, from end to end of each cable, three tarred-mark yarns spun with turn contrary to that of rope yarn, and also one such tarred yarn in every other rope for the use of shipping, and by marking on a tally to be fixed on the same the word "*staple*," or "*inferior*," according to the quality (2), and also his name, signed by himself or his attorney, together with the name of the place where manufactured (3), and in default thereof every manufacturer shall for every offence forfeit 10 s. a hundred weight; and if any ropemaker shall wilfully or knowingly permit his name to be put as aforesaid on the tally of any cable, &c. not being of his own proper manufacturing; or if the vendor or proprietor of any such cable, &c. or any other person whomsoever, wilfully and knowingly mark upon the tally affixed thereon the name of any person not being the manufacturer thereof he shall forfeit £20 (4). And if any person shall make any cables of any old or worn stuff, which shall contain above seven inches in compass, he shall forfeit four times the value thereof (5). And when any ship belonging to any of his majesty's subjects resident in Great Britain, or in the British colonies, shall come into any port in this kingdom, the master at the time of making his entry at the custom house shall

Entry on Importation.

(1) 25 Geo. 3. c. 56. s. 2.
(2) s. 3.
(3) Id. s. 4.
(4) Id. s. 5.
(5) Id. s. 6.

make entry on oath of all foreign made cordage on board, for which no duties have been paid, (standing and running rigging in use excepted); and such master shall before such ship be cleared inwards where any discharge shall be made of her lading, pay for such foreign made cordage, as shall be specified or mentioned in the said entry, the like duties as by the laws now in being are charged upon foreign made cordage imported into this kingdom, and if such master shall make default herein such foreign made cordage on board such ship shall be forfeited, and he shall also forfeit 20s. for every hundred weight thereof (1). But the same shall not extend to cordage brought from the East Indies, nor to the materials at present in the use of any ship built abroad before the passing of this act, the property of any British subject (2). All pecuniary penalties or forfeitures by this act imposed exceeding £5 are to be recovered in the courts of Westminster, if not exceeding £5 the same may be levied by distress, by one justice, on the oaths of two witnesses, and if sufficient distress cannot be found such justice shall commit the offender to the common gaol or house of correction for any time not exceeding three calendar months, nor less than seven days, or until such penalty and all costs and charges shall be paid; all such penalties and forfeitures, and also all cordage which shall be forfeited, shall be paid and delivered to the person who shall sue, who may sell or otherwise dispose of such cordage (after being cut into lengths not exceeding twelve feet) to his own use (3); provided that if any person shall think himself aggrieved by any thing done in pursuance of this act, and for which no particular method of relief is appointed, he may within four months appeal to the sessions, giving fourteen days' notice in writing of his intention to appeal, and the matter thereof, to the person appealed against, and within four days after such notice entering into recognizance before some justice, with two sureties, to try such appeal, and abide the order and pay such costs as shall be awarded at sessions; and on due proof of notice and entering into the recognizance, the justices at such sessions shall hear and finally determine such appeal, and award such costs as they shall think proper, which determination shall be final and conclusive (4); and no order, verdict, judgment, or other proceeding shall be quashed for want of form only, or be removed by *certiorari* or other writ into any other court; and such distress shall not be

CORDAGE.

(1) 25 Geo. 3. c. 56. s. 8.
(2) Id. s. 9, 10.
(3) Id. s. 7.
(4) Id. s. 11.

CORDAGE.

deemed unlawful, or person making the same a trespasser on account of any defect or want of form in the proceedings; nor shall the party distraining be deemed a trespasser *ab initio* on account of any irregularity which may afterwards be done by the party distraining; but the person aggrieved may recover special damage in an action upon the case; but no plaintiff shall recover in such action if sufficient tender of amends hath been made before action brought. (1)

CUTLERY.

The manufacture of articles of *cutlery* is now regulated by the stat. 59 Geo. 3. c. 7. which recites, that knives, forks, razors, scissors, shears, and other cutlery wares, edge tools and hardware requiring a cutting edge, formed of wrought steel or of iron and steel, had for many years been a great branch (2) of trade in England, and such articles being esteemed in foreign countries for their superior quality, great quantities had been sent to foreign markets; and that a practice prevailed of forming such articles in a mould from cast iron, and afterwards, by a chemical process, previous to the finishing and polishing, making them resemble so nearly the same sorts of articles wrought of steel or iron and steel as scarcely to be distinguishable from such compositions even by manufacturers themselves. The statute was therefore passed to give to manufacturers of articles made with the hammer, the privilege of marking them with the figure of a hammer, and to prohibit those who made goods by casting them them in a mould from using such inscriptions as might lead purchasers to suppose that they had been made in some other manner. The provisions are as follows:—the first section directs, that where any articles are formed or manufactured by the hammer of wrought steel or iron and steel, the manufacturers shall be at liberty to mark or stamp them with the figure of a hammer at any time after the forging and previous to their being ground or polished (and not at any other time, except as therein provided), so as to denote that such articles of cutlery were so formed by the hammer of wrought steel or iron and steel, and so as to distinguish the same from articles cast in a mould or otherwise than by the hammer (3). All persons having such manufactured articles in their possession are authorized to mark those made by means of the hammer of wrought steel and of iron

Cast goods not to be marked as wrought, &c.

(1) 25 Geo. 3. c. 56. s. 12. Burn, J., tit. Cordage.

(2) 59 Geo. 3. c. 7.

(3) 59 Geo. 3. c. 7. s. 1.

and steel, at any time within six calendar months after the passing of the act, with the figure of a hammer to distinguish them from those formed in any other manner (1); and it shall not be lawful for any person to mark upon any articles of cutlery, edge tools, or hard-ware requiring a cutting edge, which shall be cast or formed in a mould, or otherwise than by means of the hammer, either at the time of the casting or forming them, or subsequently thereto, and previously to the *bonâ fide* sale thereof to the user, the figure or form of a hammer, or any symbol or device resembling a hammer, nor to have in his possession for sale, nor to sell or expose to sale any such articles not made by the hammer having such false marks upon them, on pain of forfeiting all such articles, together with the sum of £5 for any number not exceeding one dozen, and for a quantity exceeding one dozen £5 for every dozen (2); the like penalty is also imposed upon persons marking any articles of cutlery, forged with the hammer, of wrought steel, or of iron and steel, or cast in a mould at any time previous to the sale thereof by the user, with any words to denote or indicate the quality to be any other than it really is, or having in their possession, for the purpose of sale, or exposing to sale, such articles improperly marked (3). It is also provided that no person shall mark or stamp on any articles the words "*London*," or "*London made*," nor shall have in possession, or sell or expose to sale such articles so marked, unless the same shall have been manufactured within the city of London, or the distance of twenty miles from it, under the penalty of forfeiting the articles so marked, with the sum of £10 for any quantity less than one dozen, and £10 for every dozen exceeding that number (4). But the statute exempts from penalties a person having articles in a finished state in his possession, or selling them marked contrary to its provisions, who shall, on any information or complaint against him, prove satisfactorily by his own oath, or that of any other person before a justice, that the articles were purchased or came into his possession, or were made before the passing of the act (5). And also any person having for sale or selling cutlery not made before the passing of the act, and marked contrary thereto, who shall, at or before the information or complaint against him, prove satisfactorily by his own oath, or that of another person, before a

Cutlery.

Marks to denote a false quality.

London made.

Exemptions.

(1) 59 Geo. 3. c. 7. s. 2.
(2) s. 3.
(3) s. 4.
(4) s. 5.
(5) s. 6.

CUTLERY. justice, that he purchased the articles with the marks upon them, without knowing that they were marked contrary to the act, and shall discover to two justices the names of the persons of whom they were purchased, so that they may be prosecuted to conviction; in this case the party disclosing is not liable to punishment, but is entitled to two-thirds of the penalty as any other informer (1). And lastly, the statute exempts from punishment any person liable to penalties by reason of an act done by the order of another, who shall before information against him discover the primary offender, so that he may be prosecuted to conviction; in this case also the disclosing party is not liable to punishment, but entitled to two-thirds of the penalty as any other informer (2). A power is given to two or more justices of the peace of the place where the offender resides, or where the offence is committed, to hear and determine offences against the act, and on information exhibited, or complaint made, to summon the party and witnesses, and examine into the matter, and upon due proof, either by confession or the oath of one or more credible witnesses, to give judgment for the pecuniary penalty, with costs to be allowed by such justices, and to issue out their warrant, under their hands and seals, for the levying such penalty and costs on the goods and chattels of the offender, and unless redeemed within five days, including the day of seizure, to cause the same to be sold, and to render the overplus, after deducting thereout the expences of distress and sale, to the party distrained upon; and for want of sufficient distress the offender is to be committed to the gaol of the place where the offence is committed, for any time not exceeding three calendar months, unless payment be sooner made of the penalty and costs (3). An appeal may be made to the next general quarter sessions, on giving security, with sufficient surety, to the amount of the value of the penalty and costs, together with such further costs as shall be awarded, in case judgment should be affirmed (4). The magistrates before whom the information is laid, or at the sessions, may mitigate the penalties in such manner as they see fit, provided that such penalties shall in no case be mitigated to less than one-half, or where they are less than £50 to less than £25 (5). No conviction can be set aside for want of form, or for a mistake, provided the material facts alleged in it, and upon

(1) 59 Geo. 3. c. 7. s. 7.
(2) s. 18.
(3) Id. s. 8.
(4) 59 Geo. 3. c. 7. s. 9.
(5) s. 10.

CUTLERY.

which it is grounded, are proved to the satisfaction of the court (1). A concise form of conviction is given, and £10 penalty may be recovered against a witness neglecting to appear before the magistrates (2). A justice of the peace may issue his warrant to cause forfeited articles to be seized and kept in safe custody, in order to be produced on a prosecution for pecuniary penalties, and when the further production has become unnecessary, they may by order of the justices be destroyed or disposed of as the court before which the articles are produced shall direct (3). Information must be preferred within six months; one-third of the penalties goes to the poor, the other two-thirds go to the informer; an inhabitant of the parish may be a witness. (4)

Wages in money, or, by consent, in bank notes.

By statute 57 G. 3. c. 115. s. 1. the provisions of the 12 G. 1. c. 34., which prohibit the payment of the wages of persons employed in the woollen manufacture, in goods, and direct the same to be paid in money, are extended to labourers employed in the manufacture of articles made of steel, or of steel and iron combined, and of plated articles, or of other articles of cutlery (5). But by a subsequent statute any employers may pay their artificers in notes of the bank of England, or of any licensed banker, if the latter consent to take them, but not otherwise (6). And by the second section of the 57 Geo. 3. c. 115., the provisions of the 22 Geo. 2. c. 27., to facilitate labourers in the woollen trade recovering their wages, as well as their imposing a penalty on the masters paying labourers in goods, are extended to persons employed in the manufacture of articles of cutlery, and all remedies, penalties, modes of recovery, powers, and privileges, and other matters and things, therein for these purposes contained, are extended to persons in anywise concerned in such manufactures. (7)

FIRE-ARMS.

The statute 53 G. 3. c. 115. after reciting that serious injuries were frequently sustained in consequence of the bursting of guns, fowling pieces, blunderbusses, pistols, and other *fire-arms* (8), on account of the barrels not having been sufficiently proved; and that

(1) 59 Geo. 3. c. 7. s. 11.
(2) s. 12.
(3) s. 14.
(4) s. 15, 16.
(5) 57 Geo. 3. c. 115. s. 1.
(6) 58 Geo. 3. c. 51. s. 1
(7) 52 Geo. 3. c. 115. s. 2.
(8) And see 47 Geo 3. sess. 2. c. 54. as to improper persons having arms in Ireland.

FIRE-ARMS.

it was expedient that the manufacturers of fire-arms should be compelled to prove the same at some place appropriated for that purpose as a public proof-house; and also, that great quantities of fire-arms, and barrels for fire-arms, were manufactured in Birmingham and the vicinity, and that it would tend to the safety of the public if a proof-house, under proper inspection, were established in or near that town, enacts, that no barrel shall be used in making any fire-arms, usually called small-arms, unless they have been duly proved at the proof-house of the gun maker's company in London, or at the proof-house to be established under the provisions of that act, or some proof-house belonging to his Majesty, or other proof-house established as a public proof-house by law, and which public proof-houses his Majesty was thereby authorized to establish in such places and under such regulations as to the care and management thereof as his Majesty should think fit (1). The same statute provided, that the lord lieutenants of the counties of Warwick, Worcester, and Stafford, and the persons serving in parliament for those counties, and certain other persons therein named, and their successors, should be a body corporate, and called "The guardians, trustees, and wardens of the gun-barrel proof-house of the town of Birmingham," for proving barrels for guns, and other descriptions of fire-arms brought to the proof-house at Birmingham to be proved; but this part of the act is repealed by the 55 Geo. 3. c. 59., which provides, that the lord lieutenants of the counties of Warwick, Worcester, and Stafford, and the persons serving in parliament for those counties, and certain other persons whose names are specified, with the high and low bailiffs for the said town, and all acting magistrates residing within seven miles of the said town, and their successors, to be chosen in manner directed by the first-mentioned act, shall be a body politic and corporate by the name of "The guardians, trustees, and wardens of the gun-barrel proof-house of the town of Birmingham," for the purpose of proving barrels sent to them for that purpose, according to the provisions of the 53 Geo. 3. (2); by which statute it was enacted, with regard to the mode of electing wardens, that such of the members of the corporation as should be resident in Birmingham, or within twenty miles, should meet before the 1st of August then next, at some convenient place in the town, and that the major part of

No barrel used without proving.

Proof house at Birmingham.

(1) 53 Geo. 3. c. 115. s. 1.

(2) 55 Geo. 3. c. 59. s. 17.

FIRE-ARMS.

the guardians then present (not being less than ten), should choose three persons out of the guardians, trustees, and wardens, to be wardens of the proof-house, to inspect and superintend the proving of barrels sent to be proved at that house, and to have the sole management for a year and no longer, unless re-elected for another year (1). And for keeping up the stock of members, that the guardians, trustees, and wardens shall meet annually on the 16th of March (unless that day be a Sunday, and then on the day following), in some convenient place in Birmingham, and elect fit persons resident therein, or within twenty miles, instead of such guardians, trustees, and wardens, (other than lord lieutenants and members), who shall have died or removed to a greater distance than twenty miles from Birmingham, or declined to act, so as by reason of such election, h ere shall not be in the whole body more than fifteen in addition to such lord lieutenants and members; and that immediately after the full number has been filled up, they shall proceed to the election of three persons by majority of voices to be wardens; and that afterwards, if any of the elected die or remove beyond twenty miles, another person shall be chosen warden for the remainder of the year at a meeting, of which seven days' notice is to be given (2). And as sums of money had been subscribed for establishing a public proof-house, the 53 Geo. 3. provides, that the guardians, trustees, and wardens shall immediately after the passing of the act enter all such subscriptions in a book kept for the purpose, and call for the money in regular proportion from the subscribers, as they think fit, and the guardians, trustees, and wardens are authorized to receive the same, and in case of refusal, to proceed by action in the name of the treasurer, in which action it will be sufficient to state, that the person subscribing is indebted to the treasurer for the sum subscribed under the act; and out of such monies the guardians, trustees, and wardens are required, in the first place, to reimburse the charges incurred in passing or arising out of the act; and, in the next place, to establish a proper proof-house, with all things necessary for proving barrels of fire-arms, and maintaining the same in proper order and condition (3). The 7th section enacts, that all barrels brought to the proof-house for proof shall be proved with powder of an equal quality to that now used by the board of ordnance, and according to the

(1) 53 Geo. 3. c. 115. s. 4.
(2) Id. s. 5.
(3) Id. s. 6.

FIRE-ARMS. scale or table therein mentioned, and shall be marked as mentioned in the act (1). And that it shall be lawful for the guardians, trustees, and wardens at their annual general meetings

(1) 53 Geo. 3. c. 115. s. 7.

SCALE.

| Number of balls to a lb | Weight of powder for proof. | | Number of balls to a lb. | Weight of powder for proof. | |
|---|---|---|---|---|---|
| | oz. | drs. | | oz. | drs. |
| No. 1. | 11 | 0 | No. 26. | 0 | 8½ |
| 2. | 5 | 5 | 27. | 0 | 8½ |
| 3. | 3 | 8 | 28. | 0 | 8½ |
| 4. | 2 | 11 | 29. | 0 | 7½ |
| 5. | 2 | 2 | 30. | 0 | 7½ |
| 6. | 1 | 12 | 31. | 0 | 7½ |
| 7. | 1 | 8 | 32. | 0 | 7½ |
| 8. | 1 | 6 | 33. | 0 | 7 |
| 9. | 1 | 2 | 34. | 0 | 7 |
| 10. | 1 | 1 | 35. | 0 | 7 |
| 11. | 0 | 16 | 36. | 0 | 7 |
| 12. | 0 | 16 | 37. | 0 | 7 |
| 13. | 0 | 15 | 38. | 0 | 6½ |
| 14. | 0 | 14 | 39. | 0 | 6½ |
| 15. | 0 | 14 | 40. | 0 | 6½ |
| 16. | 0 | 13½ | 41. | 0 | 6 |
| 17. | 0 | 13½ | 42 | 0 | 6 |
| 18. | 0 | 12½ | 43. | 0 | 6 |
| 19. | 0 | 11 | 44. | 0 | 6 |
| 20. | 0 | 10 | 45. | 0 | 5½ |
| 21. | 0 | 10 | 46. | 0 | 5½ |
| 22. | 0 | 9 | 47. | 0 | 5½ |
| 23 | 0 | 9 | 48 | 0 | 5½ |
| 24. | 0 | 8½ | 49. | 0 | 5½ |
| 25. | 0 | 8½ | 50. | 0 | 5½ |

And which scale of proofs is equal to the proofs of the honourable board of ordnance in preportion to the calibres of the barrels proved by them; and when so proved, such barrels shall be marked with the following marks, and no other, viz.



to establish such rules as may be necessary for receiving barrels for proof, proving and marking them, and re-delivering them when so proved and marked (1). It is also enacted, that the said company shall annually on the 16th of March, unless it happen on a Sunday, and then on the following day, meet at a convenient place in Birmingham, and choose by majority of voices a skilful person, experienced in proving gun-barrels, who shall continue in office one year, if the wardens for the time being think fit, who (with such assistant or assistants as shall be appointed by the wardens for that purpose) shall prove all barrels brought to him for that purpose, according to the lawful scale; and having proved, shall mark the same as aforesaid, and according to the regulations established in that behalf; such prover having, before he begins to act, taken the following oath before a justice of the peace for the county of Warwick: "I do swear, that I will be faithful and true to our sovereign lord king George, and will, so long as I continue proof master of the Birmingham gun barrel proof-house, well and faithfully behave myself in the said office, and prove all barrels brought to me for that purpose, according to the scale or table mentioned and set forth in an act of parliament, made and passed in the 53d year of the reign of king Geo. 3., intituled An Act [here insert the title of the act]; and that I will not, during the time I shall continue such proof master, take any fee or reward from any person or persons to prove any barrel or barrels, otherwise than as the act directs; and that I will execute the said office without favour or affection, prejudice or malice, and to the best of my skill and ability. So help me God." (2) From the acts, orders, or proceedings of the said trustees, guardians, and wardens, an appeal is allowed to be made by a person aggrieved to the next general quarter sessions of the peace for the county of Warwick; the appellant first giving (if there be sufficient time after the cause of complaint has arisen) eight days notice at least in writing of his intention of bringing such appeal, and of the matter thereof, to the clerk or treasurer of the trustees, and within four days after such notice (if required) entering into recognizance before some justice of the peace for the county, with two sufficient sureties conditioned to try such appeal, and abide the order thereon, and to pay such costs as shall be awarded by the justices at such quarter sessions;

FIRE-ARMS.

(1) 53 Geo. 3. c. 115. s. 7. that part of the act which fixes the prices of proving barrels is repealed by 55 Geo. 3. c 59. s. 4.

(2) 53 Geo. 3. c. 115. s. 8.

FIRE-ARMS. and for want of sufficient time for giving notice previously to the first quarter sessions after the cause of such complaint shall have happened, then such appeal, after such notice, and under such recognizance, may be made at the second general quarter sessions of the peace; and the justices at such first or second sessions shall hear and determine such appeal, and award such costs to either party, as they think proper; the determination at the sessions to be final; the justices being also empowered to levy such costs, by order or warrant, by distress and sale of the goods of the offender, who for want of sufficient distress may be imprisoned for a time not exceeding three calendar months, or until payment (1). The accounts of the said proof-house, and all sums of money to be paid, laid out, and expended, and all sums received, are to be audited once every year before some justice of the peace acting at Birmingham, or within seven miles thereof (2). A later statute of the 55 Geo. 3. c. 59. after reciting that a proof house had for a long time past been established for proving the barrels of fire-arms in or near the city of London, under the management and controul of the company of gunmakers of the city of London, by virtue of a charter theretofore granted to the company, provides, that all barrels for fire-arms, usually called small-arms, which shall be taken to the proof-house of the company, shall be proved by the proof-master with powder of equal quality to that used by the honourable board of ordnance, and not according to the scale of proof set forth in the 53 Geo. 3. c. 115.; and the person having the care of the company's proof-house shall receive all barrels sent to the house and prove them, and cause the barrels after they have been proved and (if found to be proof) marked, to be delivered to the persons to whom they are directed, on payment of all such charges as have been incurred in respect of the carriage and delivery of such barrels at the proof-house, and of the company's charges for proving them, and of the keeping of them for proof, and delivery thereof to the person they are intended or directed for; and if a barrel so sent to the proof-house to be proved, be not received, and proved thereat according to law, or be delivered or parted with not proved, and if found to be proof duly marked, the person having the care of the proof-house shall forfeit ten shillings for every such barrel (3). The

Proof by company of gunmakers in London.

(1) 55 Geo. 3. c. 59. s. 14.
(2) Id. s. 16.
(3) 55 Geo. 3. c. 59. s. 4.

FIRE-ARMS.

Prices of proving.

55 Geo. 3. c. 59. repeals the regulations contained in the 53 Geo. 3. c. 115.(1) respecting the prices of proving barrels, and enables the company to regulate from time to time the sums to be paid for such proofs, so that no higher sum shall in any case be demanded or received for any barrel proved at such proof-house, and marked as proved under the 53 Geo. 3. c. 115. or the 55 Geo. 3. c. 59., than the following; *viz.* For any common birding, Spanish, Dutch, Carolina musket, carbine, or other barrel, not being made of twisted or stub iron, nor above the calibre of six-eighths and a half, any sum not exceeding sixpence for every barrel; 2. For every pair of plain iron or brass holster or saddle pistol barrels, the like sum; 3. For every barrel made of twisted or stub iron, any sum not exceeding nine-pence; and for every pair of stub or twisted pistol barrels, the like sum; and 4. For every barrel above the calibre of six-eighths and a half, any sum not exceeding one shilling. (2) It is enacted by the statute 55 Geo. 3. c. 59. s. 1., after reciting that the statute 53 Geo. 3. c. 115. had been found insufficient for the purposes thereby intended, that no person shall use or begin to use, either by ribbing, break-off fitting, rough-stocking, or other process, in any progressive state of manufacture, in the making, manufacturing, or finishing of any description of fire-arms, usually called small arms, any barrel which has not been duly proved, and marked as proved, at the proof-house of the company of gunmakers of the city of London, or at the proof-house established under the provisions of the 53 Geo. 3. c. 115. (so long as such respective proof-houses shall be maintained for proving and marking the barrels of fire-arms), or some proof-house belonging to his Majesty, or other proof-house to be established as a public proof-house (and which public proof-house his Majesty was thereby empowered to establish, under such regulations as to the care and management as he should think fit), should respectively forfeit for every barrel a sum not exceeding £20, to be recovered and applied as therein mentioned (3); and all barrels are required to be sent to some established proof-house immediately from the hands of the manufacturer, and not to be sold or removed for sale until they have been so proved, under the like penalty (4). The same penalty is also imposed upon persons *receiving* barrels without

Barrels not to be used unless proved.

(1) 55 Geo. 3. c. 59. s. 3.
(2) Id. s. 9.
(3) 55 Geo. 3. c. 59. s. 1.
(4) Id. s. 2.

FIRE-ARMS.

Exceptions as to Scotland or Ireland, or his majesty, or the East India Company's forces, &c.

being so proved and marked as such, for the purpose of making them up into any kind of small fire-arms (1). But the 55 Geo. 3. declares that it shall not extend to Scotland or Ireland, except as to forging marks, as after mentioned, or to the proving of any barrels used in manufacturing any musket, pistol, or other fire-arms, for his Majesty's forces or the East India Company, or to any barrels of the following description, viz. any barrels in the forged, ground, finished, or in any other state of manufacture, and made of stub or twisted stub iron, or other barrels usually termed best barrels, which said last-mentioned barrels may be sent, bought, or received for the purposes aforesaid, in any number not exceeding twenty, without being subject to any penalty (except that such barrels shall be liable to the penalty for using barrels not being duly proved or marked), and they are exempt from being proved and marked, as required by the said acts (2). Offences are to be determined before two justices, on the oath of one or more witnesses; the amount of the penalty to be settled by the justices, half to the informer and half to the poor, and such costs to be paid as the justices shall think reasonable; and unless the penalty and costs are forthwith paid, or notice of appeal given,—for which purpose the party must enter into recognizances, himself in a sum double the amount of the penalty, and two sureties in a sum equal to the amount of the penalty, with condition to appear personally and prosecute such appeal at the next general quarter or general sessions of the peace for the place where the offence has been committed,—they are levied on the offender's goods by distress and sale, by warrant under the hands of such justices; and in case no sufficient distress can be had, the justices are, by warrant, to commit the offender to the gaol or house of correction within their jurisdiction, there to remain, without bail or mainprize, for any time not exceeding six calendar months (3). The 55 Geo. 3. c. 59. provides, that neither the said respective companies of gunmakers, nor their agents, shall be subject to any prosecution or information under the acts of parliament, unless it shall be commenced within six months next after the offence committed (4). A form of conviction is given by the act, which is to be transmitted to the next general sessions or quarter sessions of the peace for the place where such convic-

Offences,—Penalties before two justices.

(1) 55 Geo. 3. c. 59. s. 3.
(2) Id. s. 5.
(3) Id. s. 10.
(4) Id. s. 11.

tion was had, to be filed amongst the records (1). Persons aggrieved may appeal to the justices at the next general or general quarter sessions of the peace for the county or place where the offence was committed. The sessions are to award such costs to either party as shall seem reasonable, and their decision is to be final; and if, upon hearing the appeal, the former judgment be confirmed, the appellant is forthwith to pay the penalty, and all costs awarded against him; and, in default of payment, to be imprisoned in the common gaol or house of correction of the place where the offence was committed, for any time not exceeding six calendar months, or unless the penalty and costs be sooner paid (2). The 55 Geo. 3. provides, that no action or suit shall be commenced against any person for any thing done in pursuance of that act, or of the 53 Geo. 3. c. 115., until after thirty days' notice in writing be given to the proof-house of the town of Birmingham, or their solicitor, or the company of gunmakers of London, or after sufficient satisfaction tendered, or after six calendar months after the fact committed for which such suit shall be brought; and all such suits shall be laid in the county where the cause of it has arisen, and the defendant in such action may plead the general issue, and give the 55 G. 3. c. 59. and 53 G. 3. c. 115., and the special matter in evidence, and that the matter or thing for which the action was brought was done by authority of those acts; and if such shall appear to be the case, or that sufficient amends was tendered, or that the plaintiff in such action has not complied with any of the above-mentioned provisions, the jury shall find for the defendant; and if upon such verdict, or upon the plaintiff's becoming nonsuited or suffering a discontinuance, or upon a demurrer in such action, judgment be given for the defendant, he shall recover treble costs. (3) FIRE-ARMS.

The sale of *fireworks* is prohibited by the stat. 9 & 10 W. 3. c. 7., which provides, that no person shall make, sell, or utter any squibs, rockets, serpents, or other fireworks, or any cases, moulds, or other implements for making them, nor permit the same to be thrown or fired from his house or lodgings, or any place thereto adjoining, into any public street, highway, or passage, or for any person to throw or fire, or be aiding in throwing or firing the same in or into any public street, house, shop, FIREWORKS.

(1) 55 Geo. 3. c. 59. s. 12.
(2) Id. s. 13.
(3) Id. s. 15. Act a public act, s. 18.

FIREWORKS. river, highway, or passage, and that every such offence shall be deemed a common nuisance (1). And that a penalty of £5 shall be recoverable for making or selling, on conviction before one justice, on confession or oath of two witnesses, half to the informer and half to the poor, to be levied by distress and sale (2). And a 20*s*. penalty for causing them to be fired, the offender in default of payment to be imprisoned one month, unless he shall sooner pay the money (3). But the statute provides, that it shall be lawful for the master, lieutenant, or commissioners of his Majesty's ordnance, or any person authorized by them, to give orders for making any fireworks to be used and fired according to such orders (4), and also for the artillery company of London, or any other artillery company or society of persons lawfully met for the use and exercise of arms, the trained bands, or the militia, to make and use any fireworks in the exercise of arms and warlike exploits, as they might have done before (5).

FLAX & HEMP. The growth and manufacture of *flax and hemp* have been objects of the encouragement of the legislature. By 26 Geo. 3. c. 43. and 27 Geo. 3. c. 15., a yearly sum not exceeding £6335 15*s*. (6), at the rate of 3*d*. *per* stone of hemp, and 4*d*. *per* stone of flax, was directed to be raised, to be paid to the grower or other person who breaks or properly prepares the same for market, and the regulations relative thereto were placed under the cognizance of the justices at sessions; but the act was to continue only seven years, and from thence to the end of the next session of parliament (7). By the 33 Hen. 8. c. 17., it was made unlawful for any person to water hemp or flax in any river, running water, stream, brook, or other common pond where beasts are used to be watered, on pain of forfeiting 20s., half to the king, and half to the party grieved, or any person suing in any court of record, leet, or law day (8). The encouragement given to the *importation* of flax and hemp from America and

(1) 9 & 10 W. 3. c. 7. s. 1. See an information which need not negative the provisoes in other sections, Burn, J. tit. Fireworks.

(2) Id. s. 2.

(3) Id. s. 2 and 3.

(4) Id. s. 4.

(5) Id. s. 15. Persons sued may plead the general issue, s. 6.

(6) 27 Geo. 3. c. 15. s. 65.

(7) 26 Geo. 3. c. 43.; and see the following statutes which relate to this subject, 22 Geo. 3. c. 82. 21 Geo. 3. c. 58. 10 Geo. 3. c. 40. 7 Geo. 3. c. 58.

(8) 33 H. 8. c. 17. s. 2. Postlethwaite Dict. Comm. tit. Flax.

Ireland has already been treated of (1). In the imposition of the excise duties, allowances are made in respect of articles consumed in the manufactures: for every pound weight of hard soap made in Great Britain, which shall be consumed in Great Britain on or before the 25th of March 1820, in preparing and furnishing any manufactures from flax or cotton for sale, except such as shall be used in whitening new linen in the piece, in order to the sale thereof, 1½*d.* (2); for every pound weight of soft soap made in Great Britain, which shall be so consumed, ¾*d.* (3) FLAX & HEMP.

FRAMES AND FRAME-WORK.

There are various legislative provisions in force with respect to frames and frame-work. The statute 57 Geo. 3. c. 126., renders the destruction of frames or articles upon them a capital offence; it repeals the 54 Geo. 3. c. 42., and enacts, that if any person shall by day or night *enter* by force in to any house, shop, or place, with intent to cut or destroy any frame-work knitted pieces, stockings, lace, or other articles or goods, being in the frame or upon any machine or engine thereto annexed, or therewith to be used or prepared for that purpose, or with intent to break or destroy any frame, machine, engine, tool, instrument, or utensil, used for working and making such frame-work knitted pieces, stockings, lace, or other articles or goods in the hosiery or frame-work knitted manufactory, or shall wilfully and maliciously, and without the consent of the owner, destroy or cut with intent to destroy or render useless, any frame-work knitted pieces, stockings, lace, or other articles or goods being in the frame, or on any machine or engine as aforesaid, or prepared for that purpose, or shall wilfully and maliciously, and without the consent of the owner, break, destroy, or damage with intent to destroy or render useless, any frame, machine, engine, tool, instrument, or utensil, used for the working and making of any such frame-work knitted pieces and frame-work lace manufactory, or shall wilfully and maliciously, and without the consent of the owner break or destroy any machinery contained in any mill or mills used or in any way employed in preparing or spinning wool, or cotton, or other materials for the use of the stocking or lace manufactory, every offender being Breaking frames.

(1) See ante, 1 vol. 543, 4. 26 Geo. 3. c. 53. s. 12. 46 Geo. 3. c. 29. s. 4. and other statutes there referred to. Postlethw. Com. Dict. tit. Flax.

(2) 23 Geo. 3. c. 77.—56 Geo. 3. c. 44.—55 Geo. 3. c. 178.

(3) 23 Geo. 3. c. 77.—43 Geo. 3. c. 69.—55 Geo. 3. c. 178.

FRAMES AND FRAME-WORK.

thereof lawfully convicted shall be adjudged guilty of felony, and shall suffer death as in case of felony without benefit of clergy (1). This act was to continue in force till the 1st of August 1820 (2). So with regard to the hirers of stocking frames, the stat. 28 G. 3. c. 55. enacts, that if auy frame-work knitter who shall rent or take by the hire any stocking frame either with or without any machine or engine thereto annexed, or therewith to be employed, shall refuse to yield up and re-deliver the same with the machine or frame to the person of whom he shall so rent it, after fourteen days notice, he shall on conviction by the oath or solemn affirmation of the owner or employer of the frame, or of any other witness, before one justice where the offence is committed, or where the person charged shall inhabit, forfeit 20s. to the poor, and if this be not immediately paid, and such frame delivered up to the owner within six days after conviction, such justice shall commit the offender to the gaol or other public prison to hard labour for any time not exceeding three months nor less than one month (3). The statute also provides, that if any person so renting or taking to hire any stocking frame with or without such machine as aforesaid, shall sell or unlawfully dispose thereof, or the machine, &c. therewith let, without the consent of the owner, or shall wilfully and knowingly receive or purchase any such so sold or unlawfully disposed of as aforesaid, contrary to the true intent and meaning of the act, every such offender being convicted upon indictment, shall suffer solitary imprisonment in the gaol or house of correction for not less than three nor more than twelve calendar months. (4)

Not returning stocking-frames hired.

FRAME-WORK.

Articles of frame-work composition are required to have certain marks. The 6 Geo. 3. c. 29. enacts, that all frame-work knitted pieces, and stockings made of thread, cotton, worsted, or yarn, or any mixture of all or any of the said or of any other materials, except such as shall be made of silk only, which shall contain three or more threads, shall be marked with the same number of ilet-holes, and no more, as there are threads contained in each piece or pair; and such ilet-holes shall be made distinctly in one direct line, or in the same course, and shall not exceed the distance of three inches from the two extreme ilet-holes; and no such ilet-holes shall be made or placed within the

(1) 57 Geo. 3. c. 126. s. 2.
(2) Id. s. 3.
(3) 28 Geo. 3. c. 55. s. 1.
(4) Id. s. 2, 3.

distance of four inches of any letter, figure, mark, or other device, which shall be put or woven in any such goods or manufactures; and all such ilet-holes shall be made within four inches of the top or end of every such piece or pair, and no ilet-hole or imitation thereof shall be made or put in any frame-work knitted piece or pair of stockings, upon any account whatsoever, except as before directed (1). But manufacturers may use remnants or materials of any sort in the welts and tops of stockings only, at any distance not exceeding three inches from the top, although the same shall not contain so great a number of threads as are contained in the legs of such stockings (2). Whoever shall make or work, or cause or procure to be made or wrought, any frame-work knitted goods of any the materials aforesaid, or any mixture thereof (except those made of silk only) without being so marked, shall forfeit the same, and also £5 for each piece of such frame-work knitted goods or pair of stockings (3); but these penalties do not extend to a journeyman or person not making such goods on his own account, who forfeits only a sum not exceeding 40*s.* nor less than 5*s.* for each piece or pair; and if he can prove that the goods were so marked by the direction of his master or the person employing him, he is not liable to any penalty (4). And any person exposing to sale such goods not duly marked as aforesaid, shall forfeit the same, and also £5 for each piece or pair (5). If a person liable to these penalties inform against another, so that the latter may be convicted, he is thereby discharged from the penalties (6). One justice where the offence is committed (not being a frame-work knitter, hosier, or proprietor of frames), may commit the offender on the oath of one witness; and if on such conviction the penalties and forfeitures are not forthwith paid, he may issue his warrant to levy the same by distress, restoring the overplus, if any; but if there be no sufficient distress, the offender may be imprisoned in the common gaol of the place for any time not exceeding three months, unless the penalties and forfeitures are sooner paid; half of which goes to the informer, and the other half to the poor (7). Persons aggrieved may, upon giving ten days notice, and within two days after entering into recognizance, appeal to the justices at the next sessions, who, on due proof of such notice and recog-

FRAME-WORK.

(1) 6 Geo. 3. c. 29. s. 1.
(2) Id. s. 2.
(3) Id. s. 3.
(4) Id. s. 4, 5, 6.
(5) Id. s. 7.
(6) Id. s. 8.
(7) Id. s. 9.

FRAME-WORK. nizance, shall finally determine the same, and award such costs as they think fit to either party (1). But the act is not to abridge or take away any rights or privileges of the master, wardens, and assistants of the company of frame-work knitters (2).

GLASS. Glass is formed of the most ordinary substances, the ashes of plants and sand or pebbles. The manufacture was early known in England, but appears to have been first seriously pursued in 1557. In 1670, manufacturers were procured from Venice, to teach the art of making the finer glass, and their imperfect instructions were greatly improved by the French refugees in 1685. At this day no country in the world excels Great Britain in the manufacture of ordinary and flint glass. In plate glass, considerable progress has been made, but finer specimens are still to be procured from France. In 1773, a society was incorporated for twenty-one years by the name of the "Governor and company of British cast plate glass manufacture," for the purpose of carrying on and improving the manufactory by a joint stock of eighty shares of £500 each, and they established themselves in Lancashire. This undertaking, though the excellence of its wares was much extolled, does not appear to have been very prosperous, since in 1785 the proprietors, applying to parliament, complained that they had never been able to pay any dividend, though they had expended £100,000; and they prayed, that they might at least be relieved from paying duty on the waste glass. In 1798, it appears that they had brought that branch of manufacture to great perfection; but in so doing, they had sunk their own capital, and also borrowed £67,535 8s. for carrying on their business; for the payment of which, they had been compelled to sell their property to some persons, who carried on the manufacture under the act till its expiration, and also as a private company. Their capital is not to exceed £100,000, in which is included that of the former company now vested in the new corporation, and they are enabled to hold lands and tenements not exceeding £1000 *per annum*, make bye-laws, &c. They may dissolve themselves at any time by consent of a majority holding seven hundred shares, on giving six months notice in the Gazette. It was made a capital offence to commit forgeries on the company, by the 13 Geo. 3. c. 28. (3). The regulations as to the excise duties upon glass with respect to the licence to be taken

(1) 6 Geo. 3. c. 29. s. 10.
(2) Id. s. 12.
(3) 3 Adolph. 273, 4. 13 G. 3. c. 38. s. 28. revived by 33 Geo. 3. c. 17. s. 23. 3 Chitt. Crim. L. 1027.

out (1), the entries to be made of their premises, &c. &c. (2), have been already considered in a former volume, and in the treatises there referred to. FRAME-WORK.

The art of making *gunpowder* is said to have been discovered in the reign of Henry VII. (3); by its means war is reduced to a system, and battles are rendered less sanguinary. On account of its dangerous properties, and its liability to explosion, many provisions exist, chiefly introduced by statutes, with regard to the places where it may be made, where it may be kept, and to the proper mode of removing it from one place to another; there are other provisions indeed which have been already considered, with regard to the importation and exportation of gunpowder, and the materials connected with the making of it (4). The stat. 16 Car. 1. c. 21. as already observed, legalizes the importation of salt-petre, brimstone, and other materials for making gunpowder. It enacts also, that all subjects of the realm of England may *make* and sell any quantities of gunpowder (5). And by the same statute, acting under any letters patent or proclamation, whereby the making of gunpowder is prohibited or restrained, subjects the offender to the penalties of a præmunire (6). We shall proceed to the other parts of the subject in the order above mentioned. The provisions, with regard to the legality of places for making it, depend either on the common law or on statutes.—It seems, that at common law, the erecting mills or keeping powder magazines near a town is a nuisance, for which an indictment or information will lie. In a case which occurred 12 W. 3. a conviction took place on an indictment for keeping 400 barrels of powder near the town of Bradford (7). And in the 15 Geo. 3. the court of K. B. granted an information against a defendant for a nuisance, on affidavits of his making great quantities of gunpowder near Maldon in Surrey, and thereby endangering the church and houses in the neighbourhood (8.) The statutes in force previously to the 11 Geo. 3. GUNPOWDER.

(1) Ante, 1 vol. 838. n 15.; and as to renewal and transfer thereof, &c. id. 839; and see 52 Geo. 3. c. 94. s. 5. as to the regulations subjecting the retail dealer to the new duty

(2) Ante, 1 vol. 840, &c.; and see as to glass in general, ante, 1 vol. 825. Burn's J. tit. Excise.

(3) 3 Hume's Hist. 406.

(4) Ante, 1 vol. p. 529—544. 584, 5.

(5) 16 Car. 1. c. 21. s. 3.

(6) 16 Car. 1. c. 21. s. 4. 1 Jac. 2. c. 8. s. 3.

(7) Rex v. Williams, E. 12 W. 2 Stra. 1167.

(8) Rex v. Taylor, T. 15 Geo. 2. 2 Stra. 1167.

GUNPOWDER.

c. 35. (1) were repealed by that act, which, being found defective, was again repealed in the following session of parliament, and new regulations made (2). There are some establishments for gunpowder, and modes of conveying it, which, being excepted out of the statute, are still lawful, as they were before the act was passed. The fifth section of the act provides, that it shall not extend to the powder mills at that time erected in the parishes of Battle, Crowhurst, Seddlescomb, and Brede, in the county of Sussex, so far as relates to the making of such fine fowling gunpowder as is known by the name of Battle powder (3). So it does not extend to any mills or other buildings erected for the purpose of making gunpowder in any lands belonging to his Majesty, or to the keeping of gunpowder at any storehouse or magazine belonging to his Majesty, or to hinder the trial of gunpowder by his Majesty's officers as usual for the king's service, or to the keeping of gunpowder at the magazines at that time erected for the purpose at Barking Creeksmouth, in the county of Essex, and Erith Level in the county of Kent, or to the keeping of gunpowder at the magazines or storehouses then erected near Liverpool in the county of Lancaster, or the city of Bristol, or to the carriage of gunpowder to or from the king's magazines under a special and express order of the king's board of ordnance, such order to contain the quantity of gunpowder so to be carried, and the time for which such order shall be enforced, or to the carriage of gunpowder with forces on their march, or with the militia during their annual exercise, or which shall be sent for the use of snch forces or militia (4). The new statute provides that no person shall use mills or other engines for making gunpowder, or in any manner manufacture gunpowder in any place in Great Britain, except in mills and other places which were either actually in existence at the time of passing the act, or which, if erected afterwards, have been sanctioned by licence, on pain of forfeiting the gunpowder and 2s. a pound. (5)

Battle powder mills, king's magazines, &c. lawful, though requisites of 12 Geo. 3. c. 61. not complied with.

Licences for places to make or keep.

The licensing clause, after reciting that it may be necessary to have places appointed in which new mills or other engines may

(1) 5 Geo. 1. c. 26. 11 Geo. 1. c. 23. 5 Geo. 2. c. . 15 Geo. 2. c. 32. 22 Geo. 1. c. 38.
(2) 12 Geo. 3. c. 61.
(3) 12 Geo. 3. c. 61. s. 5.
(4) s. 29.
(5) s. 1.

be erected for making gunpowder, with proper magazines and offices adjoining thereto, and to have magazines for keeping unlimited quantities of gunpowder in places where there are no mills, enables the justices of the peace in Great Britain at their general quarter sessions, after a person applying to them has given fourteen days notice in writing of the intention to make such application, as also of the place proposed, to an overseer or churchwarden of the parish, or of an adjoining parish, if the *locus in quo* be extra-parochial, and the overseer has caused the notice to be publicly read on the next Sunday in the parish church after divine service, from time to time to *licence* the erecting or having of such mills for making gunpowder, and proper offices adjoining thereto, or such magazines for keeping unlimited quantities of gunpowder in such places, not being within London or Westminster, or any other limits within Great Britain described in the act (1). Where the quarter sessions refuse to license new mills and magazines for making and keeping gunpowder, or to appoint pieces of ground for magazines of gunpowder remote from any mills, the person aggrieved may apply to the sessions for a special case, and the justices there present are required to certify the special circumstances of the case, together with the proofs offered on both sides, that the proceedings may be removed by *certiorari* into the court of K. B., and the justices are required in their return to the *certiorari* to state such special case, that the K. B. may judge of the real facts; and if upon the whole matter it shall appear, to the satisfaction of that court, that the justices ought not to have refused the licence or appointment, the court has power to make an order on the justices to grant such licence, or make such appointment, without any fresh application, at their next general quarter sessions, and the costs to be incurred by the *certiorari* shall be awarded (2). But no person is liable to a penalty or prosecution for keeping, without licence, unlimited quantities of gunpowder in any magazine remote from a gunpowder mill, and already used for that purpose, in any place not being in in London and Westminster, and the other limits within Great Britain described in the act, until the expiration of six calendar months after an adjudication by the justices of the peace for the county in which the magazine shall be, at their general quarter sessions, that the same is dangerous; it being also declared, that they shall not have authority to make any such adjudication, except

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(1) 12 Geo. 3. c. 61. s. 13. (2) 12 Geo. 3. c. 61. s. 14.

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on complaint made to them of such a magazine by some householder of the parish or place, and after due summons of the owner or owners of the magazine to answer the complaint, and after such examination on oath of the witnesses produced to support or invalidate such complaint; and also, that no person shall be liable at any time to any penalty or prosecution for keeping unlimited quantities of gunpowder without such licence of the justices, in any magazine erected by appointment of the justices, under the power given to them by any of the former acts regulating the keeping and carriage of gunpowder (1). It is also enacted, that no mill worked by a pestle, and usually termed a *pestle mill*, shall be used in making gunpowder, on pain of forfeiting the powder itself, and a pecuniary penalty of 2s. per pound (2); and that no more than 40lbs. of gunpowder, or materials to be made into gunpowder, shall be made at any one time under a single pair of mill stones, on pain of forfeiting all above 40lbs. and 2s. for every pound (3); nor shall more than 40cwt. be dried in any one stove or place at one time, on pain of forfeiting all above that quantity, and two shillings for every pound thereof (4). But the 12 Geo. 3. does not extend to the powder mills at that time erected in the parishes of Battle, Crowhurst, Seddlescomb, and Brede, in the county of Sussex, so far as relates to the making of such fine fowling gunpowder as is known and distinguished by the name of Battle powder. (5)

Keeping gunpowder in drying house.

The statute renders it unlawful to keep in any corning house, drying house, dusting house, or other place used in making gunpowder, or in any building belonging thereto, except magazines of stone or brick, distant at least fifty yards from the mill, more gunpowder than is necessary for the immediate work then carrying on there (6) on pain of forfeiting all such extra quantity, and 2s. for every pound thereof. Every person keeping gunpowder mills is required to have, besides the magazines and storehouses near the mills, one or more good and sufficient magazines remote from the mills, to receive the powder as soon it can be conveniently removed from the mills; the magazines to be well and substantially built with brick or stone, near the Thames

Keeping in magazines.

(1) 12 Geo. 3. c. 61. s. 15.
(2) s. 2.
(3) s. 3.; but no prosecutions for using such mill till after one year from commencement of act.
12 Geo. 3. c. 61. s. 4.
(4) s. 6.
(5) s. 5.
(6) s. 7.

below Blackwall, or in some other convenient place, to be licensed by the justices of the peace, as directed by the sixteenth section of the act (1), on pain of forfeiting £25 for every month during which he shall make gunpowder without having such magazine, and £5 for every day during which he (not being hindered by stress of weather, or other just impediment) shall wilfully neglect or delay removing the gunpowder made at such mills from them, or from any storehouse or magazine adjoining thereto, to the magazine so to be situated remote from the mill (2); and a penalty of £5 every week is imposed upon a *maker of gunpowder*, for keeping charcoal within twenty yards from any mill or other engine for the making or keeping of gunpowder (3). It is provided, that no person being a dealer in gunpowder, shall keep more than 200 lbs., or not being a dealer, more than 50 lbs. weight, in any building or place whatever occupied by him (all buildings and places adjoining each other, and occupied together, being deemed one house or place within the act), or on any river or other water (except in carriages loading or unloading, or passing on land, or in boats or vessels loading or unloading, or passing on any river or other water, or detained there by tide or bad weather), within the following limits; (that is to say), within the cities of London or Westminster, or three miles of either of them, or within any city, borough, or market town of Great Britain, or one mile of the same, or within two miles of any palace or house of residence of the king, or of the queen consort or dowager, or within two miles of any gunpowder magazine belonging to his Majesty, or within half a mile from any parish church, or in any other part of Great Britain (except in mills or other places used at the time of the commencement of the act for making gunpowder, and the magazines, storehouses, and offices thereto adjoining and belonging, and in the places where it is lawful to make gunpowder, or to keep greater or unlimited quantities of gunpowder, by force of the provisions contained in the act,) on pain of forfeiting all such extra quantity, the barrels containing it, and 2s. for every pound thereof (4). The exception thus introduced does not apply to the limits mentioned in the first clause of this section, but only "to the other part of Great Britain" not within those limits, and therefore an

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(1) 12 Geo. 3. c. 61. s. 7.

(2) Id. s. 8.; no prosecution for offence till after a year from passing of act.

(3) Id. s. 10.

(4) s. 11.

GUNPOWDER. information charging an offence to have been committed within the limits mentioned in the first clause, need not negative this exception (1). Any quantity however, not exceeding 300 lbs. weight, may be kept in a magazine or warehouse for the use of any mine or colliery, so as the magazine or warehouse is within 200 yards from the same, and not within any of the before mentioned limits (2). A power is given to justices, on application to them at the sessions by a maker of gunpowder, to appoint pieces of ground (not being in London or Westminster, or any other of the excepted limits (3), and not exceeding one acre in any one place, with the use of convenient roads thereto) on which makers of gunpowder may erect magazines for keeping gunpowder in any quantity, after having agreed with the owners of such grounds for the purchase of the same; and if they cannot agree, the justices are to issue a warrant to the sheriff to impanel and return before them, at the times and places thereby appointed, a sufficient jury, to inquire on their oaths the value of the ground, with the use of such convenient roads thereto; the verdict is to be kept among the records at the sessions, and the judgment to be final, the justices having power to examine any parties or witnesses on oath. The money to be paid not to exceed 30 years purchase, and upon payment, or refusal by the owner to accept thereof, in which last case it is to be left for his benefit with the justices, the inheritance of the ground, and the use of the roads, is to be vested in the purchaser, his heirs and successors. (4)

Carriage of gunpowder.

The statute directs, that no person shall have or convey at any one time, within Great Britain, more than twenty-five barrels of gunpowder in any one waggon or other carriage by land, nor more than 200 barrels in any boat or other vessel by water, (except in vessels with gunpowder imported from a place beyond the sea or going coastwise, or to be exported), and all gunpowder conveyed on land or water (except in such vessels for importation or exportation of gunpowder, or going coastwise, shall be in barrels close joined and hooped, without any iron about them, and so secured that no part of it may be scattered on the passage; each barrel is to contain no more than 100lbs., and when conveyed by land, to be entirely inclosed in

(1) Rex v. Matters, 1 Barn. & Ald. 362.
(2) 12 Geo. 3. c. 61. s. 12.
(3) Supra, s. 11.
(4) Id. s. 16.

a bag called a salt-petre bag, and the carriage to have a complete covering of wood, painted cloth, tarpaulin, or wadmill tilts; and no gunpowder may be carried in any barge or vessel (except as above-mentioned in the importation, exportation, or carrying coastwise), that hath not a close deck, and as soon as such gunpowder is put on board such vessel, it shall be covered with raw hides or tarpaulins, or otherwise all such gunpowder, and the barrels containing it, may be seized by any person, who shall have the same power to remove it, and to use, for the space of twenty-four hours after seizure, the carriage or vessel in which such gunpowder is seized, and the tackling, beasts, and accoutrements, belonging to it, on paying a recompence for the use, and to detain such gunpowder as is given by the act to persons armed with a justice's warrant, the seizure being, after conviction of the offender, for the benefit of the persons seizing (1). Two justices of the peace may proceed under this clause to adjudge a forfeiture of gunpowder unlawfully conveyed to the person seizing the same, but the *conviction* must expressly shew, that the person to whom it is adjudged, is the person who seized; and the statement in the adjudicating part, but not in the information or evidence, that the gunpowder is forfeited "to the use of J. G., *the person who seized the same*," is not sufficient (2). But the act does not extend to prevent the carrying of an unlimited quantity of gunpowder in such close-decked vessels, and in the manner first-mentioned, from any vessels lying below Blackwall, to any of the magazines for gunpowder so situated below Blackwall, or from such magazines to any vessels lying below Blackwall, and going to any place beyond sea or coastwise (3). When any vessel having stale, condemned, or returned gunpowder on board, arrives at the wharf or place where it is intended to be landed, no person shall begin to unload or bring down to the wharf or place with intent to load any other gunpowder, until the whole or part of the old is first unloaded and carried away from the place of landing; and after such unloading, and then only so much of other gunpowder may be brought down or loaded on board, as has been unloaded and carried away of the old gunpowder, on pain of forfeiting all such gunpowder as shall be so brought down and loaded contrary hereto (4). And a penalty

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Unloading and reloading.

(1) 12 Geo. 3. c. 61. s. 18.
(2) Rex v. Smith, 5 M. & S. 133.
(3) 12 Geo. 3. c. 61. s. 30.
(4) Id. s. 19.

GUNPOWDER. of £5 is imposed upon any person having or permitting any charcoal or other combustibles, fire or lighted candle, or smoaking on board barges or other vessels carrying gunpowder, (except vessels for importation or exportation, or going coastwise). (1) And any person having the care of a carriage for the conveyance of gunpowder by land, stopping, after beginning to unload gunpowder, any longer time than is reasonably necessary and due diligence authorizes, for the purpose of loading or unloading, unless hindered by the weather or other impediment, shall forfeit the sum of £10 (2), but the last clause of this section, which provided that no other lading of any kind should be carried in any land or water carriage laden with gunpowder, has by a subsequent statute been repealed (3). And the provisions regulating the conveyance of gunpowder relate only to cases where a quantity exceeding one hundred weight is carried (4). But for the security of the great number of vessels lying in the Thames, and of the dock yards, wharfs, and buildings on the side of the Thames above Blackwall, it is enacted, that no master or any person in the care of a vessel for the conveyance of gunpowder by water, (except vessels for importation, exportation, or carrying coastwise), who, after beginning to load or unload, stays at the wharf or other place of loading, or in loading or unloading suffers a longer time to pass than with the use of all due diligence is reasonably necessary for loading or unloading, not exceeding eighteen hours, unless hindered by the weather, or whose vessel, having completed her loading, does not depart on her course the first ensuing tide, unless hindered by stress of weather or other just impediment, forfeits the sum of £10 (5). But the provisions which required that no other lading of any vessel lying in the Thames, and outward bound, shall receive on board more than 25lbs. of gunpowder (except for the king's service) before the arrival of such vessel at, over, against, or below Blackwall, and the master of every vessel coming into the Thames shall (except in the case of gunpowder for the king's service) put on shore in proper places, in conformity to the restrictions of the act, all the gunpowder on board above 25 lbs., either before the arrival of such vessel at Blackwall, or within twenty-four hours, if the weather will permit, after coming to anchor there, or to the place of unloading there, and shall

(1) 12 Geo. 3. c. 61. s. 20.
(2) s. 21.
(3) 54 Geo. 3. c. 152.
(4) 12 Geo. 3. c. 61. s. 22.
(5) s. 21.

not afterwards have on board more than 25 lbs. (except for the king's service), on pain of forfeiting all the gunpowder found on board above 25 lbs., and the barrels containing the same, and also 2s. for every pound above that quantity (1). And the corporation of Deptford Trinity House are to appoint searchers, who may between sun-rising and sun-setting enter any vessel (except his Majesty's ships) in the Thames above Blackwall, and search for unlawful quantities of gunpowder, and who have the same powers of seizing, removing to proper places, and retaining all such gunpowder and barrels as is given to persons searching under a justice's warrant by the twenty-third section of this statute (2), by which it is provided, that any justice, on demand made and reasonable cause assigned upon oath, may issue his warrant for searching in the day-time any house, mill, yard, or any other place whatever, or any carriage, boat, or vessel, in which such gunpowder is suspected to be made, kept, or carried, contrary to any of the provisions in the statute; and all gunpowder found on such search to be made, kept, or carried, contrary to the act, and also the barrels, shall be immediately seized by the searcher, who shall with all convenient speed remove the same to such proper place as he thinks fit; and for that purpose may, for twenty-four hours after seizure, use any carriage or vessel in which the same may be, with the tackling, beasts, and accoutrements belonging to them (and paying afterwards to the owner a sufficient recompence for the use thereof, to be settled by the justices before whom the complaint is made), and may detain the gunpowder and barrels till it be adjudged on a hearing before two justices whether the same is forfeited (3). All penalties under the 12 Geo. 3. are recoverable before two justices on conviction of the offender by confession or oath of one witness, half to be given to the king and half to the informer. And where the penalty is pecuniary, to be levied by distress and sale, rendering the overplus after deducting the penalty and expences, and for want of sufficient distress, the offender to be committed to the house of correction, and to be kept to hard labour for any time not exceeding six months nor less than three (4). And all prosecutions under this act are to be commenced within fourteen days after seizure, or after commission of the offence where there is no seizure (5). The general issue may be pleaded in

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(1) 12 Geo. 3. c. 61. s. 24.
(2) Id. s. 25. supra.
(3) Id. s. 23.
(4) Id. s. 26.
(5) Id. s. 27.

GUNPOWDER. answer to any thing done under the act, and treble costs recovered if the plaintiff fail in his suit. (1)

HATS. The manufacture of *hats* is first noticed as relating to England in the fourteenth century, when the people of Flanders dealt largely in rabbit skins from England, which they are supposed to have made into hats. In a century afterwards however the English nation had made such a proficiency in this fabric, that in a long list of articles, the importation of which was forbidden, hats were included (2). Afterwards the trade was progressively improved by the use of machinery, the skill of the French refugees, and the introduction of the beavers' instead of the rabbits' fur. In consequence hats have long been an article of exportation to a large amount, and as all the materials with which they are made and coloured, and the hats themselves worn in England are taxed, they produce a considerable sum to the revenue (3). It has been already observed, that from a regard to the interests of the hat manufacturers, the exportation of the skins or wool of hares and conies has been prohibited, and the importation of Turkey goat's hair was allowed duty free (4); and that with a view to prevent evasion of the laws against exportation, the staining or dying of the skins was prohibited (5). These laws concern the materials of the manufacture. Those are the provisions with regard to the qualification of the hatter, and to the exportation and importation of hats. All retailers of hats, commonly called felt or wool stuff, or beaver hats, or any leather or japanned hats, were required by the 51 Geo. 3. c. 70. to take out a *licence* from the stamp office, and to pay for the same, within the bills 40s., elsewhere 5s., which licence was to be renewed annually, ten days at least before the end of the year (6); and for selling any such hats without a licence, a forfeiture of £50 was incurred (7). Any person selling at any one time to any one person, a less quantity than one dozen is deemed a retailer (8). Every licensed retailer was also required to cause

(1) 12 Geo. 3. c. 61. s. 28.

(2) Anno 1463, by the 3 Edw. 4. c. 4., now repealed by 56 Geo. 3. c. 36. See ante, 1 vol. 517, 8, &c.

(3) See upon this subject, and the mode of making hats, Postleth. Dict. tit. Hats; and see 3 Adolph. Brit. Emp.

(4) 24 Geo. 3. sess. 2. c. 21. s. 1, 2. 6., ante, 1 vol. 577.

(5) 24 Geo. 3. sess. 2. c. 21. s. 3.; ante 577; how straw, &c. hats to be imported, ante, 1 vol. 533; or hats from plantations, ante, 1 vol. 678.

(6) 24 Geo. 3. sess. 2. c. 51. s. 1, 2. 4. But duties on hats and licences repealed by 51 Geo. 3. c. 70.

(7) Id. s. 3.

(8) Id. s. 7.

the words *Dealer in Hats by Retail* to be put up over the door, or in the front of his house or shop, and if he sell any hat without fixing such notice, he is liable to forfeit 40s. (1). Any unlicensed person fixing up these words was made liable to a forfeiture of £50. (2). By the 17 Geo. 3. c. 50. the hatters were relieved from the hardships of an act of Eliz., and another of James I. whereby they were prohibited from employing any journeymen who had not served seven years as apprentices (3). Any licensed person may *export* any number of hats not less than a certain quantity, which by the 36 Geo. 3. sess. 2. c. 125. s. 18. is declared to be not less than one dozen lined or unlined, and if lined, then without being stamped and marked, upon giving notice to the nearest distributor of stamps, who shall grant a certificate thereof (4). On the *importation* of hats made of or mixed with felt, hair, wool, or beaver, a duty of 10s. 6d. is payable (5). The duties on hats and licences were repealed by the 51 Geo. 3. c. 70. HATS.

LEATHER is the skin of several sorts of beasts, dressed and prepared for the use of the various manufacturers, whose business it is to make them up according to their different employments. The butcher, and others who flay them off the carcases, dispose of them raw or salted to the tanners, tawers, they to the shamoy, morocco, and other kinds of leather dressers, who prepare them according to their respective arts, in order to vend them among the curriers, glovers, harnessmakers, coachmakers, saddlers, breechesmakers, gilt leather makers, chairmakers, shoemakers, bookbinders, and all in any way concerned in the article of leather (6). This manufacture extends to numerous articles of dress and use, and is in all its forms carried to a great extent, and a source of ample profit to Great Britain. It would be a useless task to follow in detail all the commodities in which leather is employed. Whoever considers them in the most cursory manner, must be convinced of the vast extent and importance of this branch of commerce. It is also highly bene- LEATHER.

(1) 51 G. 3. c. 70. s. 5.
(2) s. 6.
(3) 17 Geo. 3. c. 50. ante.
(4) 24 Geo. 3. sess. 2. c. 51. s. 24.; and as to exporting and dying hare-skins and wool, and cony skins and wool, see ante, 1 vol. 577.
(5) 59 Geo. 3. c. 52. Table A.
(6) See Postlethw. Dict. Com. tit. Leather, where a full account is given of this article, and of the various employments connected with it, &c. 3 Adolph. Brit. Emp. 256.

LEATHER.

ficial to the revenue, the duties on leather being under the care of the commissioners of the excise, and numerous laws are passed for the prevention of frauds in this most useful material.

Butchers and flayers of hides, and of inspection thereof.

It is provided (1), that if any butcher, or other person, or his servant, shall wilfully or carelessly cut or gash any hide or skin so as to make the same less valuable, or shall flay the hide of any ox, bull, cow, heifer, steer, stirk, or calf, more than two inches below the knee or gambul, and shall be convicted thereof before one justice on the oath of an inspector or any other witness, he shall forfeit not more than 5s. nor less than 1s. for the raw hide of every ox, bull, cow or heifer, steer or stirk, and not more than 2s. 6d. nor less than 1s. for the hide of every horse, mare, or gelding, and not more than 6d. nor less than 3d. for the hide of every hog, pig, sheep, or lamb. Places are appointed for examining hides, with proper persons as inspectors, who have power to impose penalties for damaging hides, to mark the hides, and to do other acts necessary for preservation. The statute 39 & 40 Geo. 3. enacts, that the mayor, bailiff, or other head officer of any city, town corporate, borough, or market town, having any such officer or any two magistrates acting for the same where there is no such head officer, and in any city, &c. having no two such magistrates, any two justices acting for the division within or nearest to which any such city, &c. shall be situate, shall within three months after the passing of the act (30th June 1800) appoint some proper and convenient place for examining and inspecting all the raw hides and skins of cattle, sheep, horses, and hogs slaughtered or flayed within such place or within such distance thereof as shall be fixed by the persons choosing and appointing the same, so as such distance shall in no case exceed three miles nor be less than two miles from such city &c., and shall also appoint convenient days and hours for the inspection of such hides or skins in such place, and shall cause notice thereof and of the distance from such city, &c. to which the jurisdiction of such inspectors shall extend, to be

Places, &c. for appointing inspectors. (2)

(1) 39 & 40 Geo. 3. c. 66. s. 4. as amended by 41 Geo. 3. c. 53. s. 5. The 1 Ja. 1. c. 22. continued and amended by 13 & 14 Car. 2. c. 7.; 9 Ann. c. 11. and 24 Geo. 3. c. 19. repealed by 48 Geo. 3. c. 60.

(2) By 41 Geo. 3. c. 53., all things contained therein, and in 39 & 40 Geo. 3. c. 66., extend to raw hides flayed in G. B. found within any district, whether they have been flayed within such district or not. See form of appointment of inspectors of hides, 3 Burn's J. 798.

put up in legible characters in some conspicuous place; and the persons appointing such places shall then, or as soon after as can be done, and annually, or oftener if necessary, appoint some person or persons of competent skill to be inspector or inspectors of hides and skins within such city, &c. or the district thereof, and also from time to time supply such vacancies as may arise (1). And the persons who under this act are authorized to appoint places for examining hides, are by a subsequent statute empowered to appoint any place within any district fixed under the preceding, whether such place be within any city, town corporate, borough, or market town or not (2). If any six or more, or in case of any difference of opinion, the majority (the number in any case not to be less than three (3)) of any tanners, curriers, or other manufacturers of leather (since extended to shoemakers, saddlers, or other persons working or dealing in leather (4)), not being journeymen or apprentices, or persons working with or for any shoemaker, or worker in leather for hire, who shall be then residing and carrying on such trade within such district, and who shall have delivered in writing their respective names and places of abode, and occupation in such manufacture, shall recommend in writing to the persons authorized to appoint inspectors two persons proper to be appointed inspectors where one shall be necessary, or four where two are requisite, then one or two, as the case may require, of such persons so recommended, and no other, shall be appointed as aforesaid, provided that two or more partners shall be considered as one person only in such recommendation; and that when any complaint shall be made by any person interested or dealing in raw hides or skins in any such place, of any misconduct or neglect of duty in any such inspector and due proof there, shall be made to the satisfaction of the persons authorized by the said act to appoint inspectors, they may discharge such inspector, and appoint another in his place (5). Inspectors, before they begin to execute their office, are to take an oath (the form of which is given by the act), faithfully to execute the same according to the statute, without favour or affection, prejudice or malice; to be administered by the persons appointing them (6). Any inspector may impose such penalty for the wilful or careless cutting, gashing, or flawing of hides, or flaying hides, contrary to this act, not exceeding one-half of the highest

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Recommendation of inspectors.

Inspectors' oath.

To impose penalties for bad flaying without justice's authority.

(1) 39 & 40 Geo. 3. c. 66. s. 2.
(2) 41 Geo. 3. c. 53. s. 1.
(3) s. 3.
(4) Id. s. 2.
(5) 39 & 40 Geo. 3. c. 66. s. 3.
(6) Id. s. 6.

LEATHER. amount of the penalty imposed by the act, as he shall think reasonable, according to the state of such raw hide, without having such penalty adjudged by any magistrate or justice, in pursuance of the act (1), unless such person gives notice of his intention to dispute the payment of such penalty; in which case, the magistrate before whom the dispute is brought by any inspector or other person, shall within 48 hours summon any five impartial and respectable persons, concerned in the working or manufacture of leather (any one of whom refusing to attend, without sufficient cause, forfeits 40s. (2), to whom, or to any three or more of them (each of whom is to take an oath to do equal justice between the parties), such dispute is to be referred, and who are authorized to hear and determine the same within 24 hours; and the magistrate shall cause such raw hide or skin to be produced to such persons, and such dispute to be heard before them, and the decision of such persons, or the major part of them, shall be binding and conclusive on all the parties interested; and the party against whom such decision shall be given, shall pay the costs, to be ascertained by such magistrate (3). But in case any inspector shall deem any person liable to any higher amount of penalty, in respect of the damage done to any such hides or skins, than such half amount as aforesaid, he must proceed for the recovery thereof by information before a magistrate or justice, in the same manner as for any other penalties imposed by this act (4); and the half of the penalty imposed by such inspector in respect of such damaged hides, and also the half of such penalty adjudged by any magistrate or justice upon information of any inspector in manner aforesaid, shall go to the inspector, and the other half shall be applied for the better carrying into execution the purposes intended by these acts (5). The statutes also require, that every inspector shall, with due care, examine and mark all raw hides and skins flayed within his district (6); for which purpose, he shall provide two different stamps or marks, the one with the letter S, to denote good hides, the other with the letter D, to denote damaged hides; with the first of which he shall stamp on or near the tail every raw hide that is not damaged in the flaying, and with the other he shall stamp on one of the five shanks every one that is damaged in the flaying,

When such penalty decided by arbitrators.

When by magistrate.

Marking Hides.

(1) 39 & 40 Geo. 3. c. 66. s. 3.
(2) Id. s. 13.
(3) Id. s. 12.
(4) Id. s. 7.
(5) Id. s. 8. 41 Geo. 3. c. 53. s. 7.
(6) 39 & 40 Geo. 3. c. 66. s. 5.

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upon being paid the penalty imposed for this offence (1); for which examination and inspection he is entitled to the following fees: *viz.* for the hide of every ox, bull, cow, heifer, steer, or stirk, horse, mare, or gelding, the sum of 1d.; and for every calf, hog, or pig skin, the sum of one halfpenny; and for every sheep or lamb skin, the sum of one farthing; and if any person, not being an inspector or person authorized by him, shall so mark any hide, he shall forfeit £20 (2); also, if any person to whom such damaged hide shall belong, shall refuse to pay the penalty imposed for damaging hides, or the several sums allowed for examining and marking hides, any inspector may seize such hide; and unless the penalty be paid in less than 48 hours after seizure, or notice be given by or on the behalf of the owner of his intention of having such hide produced, and the dispute settled by arbitrators, the inspector may sell the same, and retain the penalty thereby imposed, and reasonable expences, and return the overplus to the owner (3). Any person residing in any city, town corporate, borough, or market town, or within the district thereof, for which an inspector shall be appointed, who shall wilfully neglect to bring any hide belonging to him by this act required to be stamped to the place appointed, within the hours prescribed, or ten days from the time of flaying the same (4), or shall remove or take away from such place any such raw hide that hath not been examined and marked by some inspector, or some person authorized by him, and approved by a magistrate of the district, he shall forfeit not exceeding £5, nor less than 40s., for every such hide (5). But any person, after giving notice to the inspector of his intention to carry raw hides to any other place (having an inspector appointed for it), for not less than one calendar month after the date of the notice, may carry the same to such other place during that time, for the purpose of having them examined and marked, and from time to time renew such notice for any further period not less than one month (6). All penalties and forfeitures are recoverable before one justice or magistrate of any place where the offence has been committed, on conviction or confession of the party, or on the oath of one witness, and the penalty shall be levied by distress by warrant of such magistrate; and for want of sufficient distress, if such penalty and costs shall not be forthwith paid, such magistrate

Penalties for damaging.

Not bringing Hides to be marked.

(1) 39 & 40 Geo. 3. c. 66. s. 9.
(2) Id. s. 5.
(3) Id. s. 9.
(4) 41 Geo. 3. c. 53. s. 6.
(5) 39 & 40 Geo. 3. c. 66. s. 10.
(6) Id. ibid.

LEATHER. may commit the offender to the common gaol or house of correction for any time not exceeding one month, unless the penalty and costs be sooner paid (1). Half of all the penalties and forfeitures, not otherwise disposed of, is to go to the informer, and the other half is to be applied towards carrying into execution the purposes of the act, either in rewarding any inspector acting in the district, or in paying such charges and expences as have arisen in establishing any place for the inspection of hides, or to any purpose relating to the improvement of any such place, in such proportion and in such ways, and towards such of the said purposes, as the person appointing the same place shall, with the approbation of any six or more, or in case of any difference of opinion of the majority of the persons dealing in leather (not being journeymen, apprentices, or persons working for hire), who shall deliver their opinions in writing to such person in manner aforesaid, direct; and if any person to whom any such money shall be paid for the purposes aforesaid, shall misapply such monies, or neglect to apply the same to the purposes of the act, he shall forfeit double the sum so misapplied, to be sued for, recovered, and applied as any penalty by this act imposed (2). And if it shall be made out on oath to the satisfaction of any magistrate or justice of the peace, that any person, whether living within or without his jurisdiction, is likely to give material evidence on either side, and will not appear voluntarily before such justice or magistrate to be examined and give his evidence, he may summon such person to appear at a reasonable time, and if he refuse to appear without just cause, he shall forfeit 40s., to be recovered in the same manner as the other penalties, and to be applied towards carrying into execution these acts; but no such person shall be obliged, by having received a summons, to travel more than six miles (3). Persons thinking themselves aggrieved by the judgment of any such justice or magistrate, where the penalty shall exceed 10s., may, upon giving security to the amount of such penalty, and forfeiture and costs, in case such judgment be affirmed, appeal to the next sessions, who may hear and finally determine the same; and if such judgment be affirmed, may award such costs as to them shall seem meet. And no such judgment or conviction (a form of which is given by the act (4) shall be removeable by *certiorari* into

(1) 39 & 40 Geo. 3. c. 66. s. 16.
(2) Id. s. 14.
(3) 41 Geo. 3. c. 53. s. 10.
(4) 39 & 40 Geo. 3. c. 66. s. 19.

any court whatever (1), but shall be certified to the next sessions, and filed among the records (2). Informations for cutting, &c. of hides, to be laid within three days after inspection, and for any other offence, within fourteen days after the offence committed (3). The observations already made do not apply to places in London, Westminster, Southwark, or within fifteen miles of the Royal Exchange, with regard to which there are other special provisions. By the 48 Geo. 3. c. 71. (4), to which persons residing within these limits are subject, provides, that seven butchers named in the act, and their successors, together with seven persons to be annually appointed by the butchers company, seven by the curriers company, and seven by the cordwainers company, are to be commissioners for putting this act in execution (5), and who are to be sworn to act impartially; and no act of theirs is to be valid unless at a meeting to be held in pursuance of the act, consisting of not less than five, the chairman of which is to have the casting vote; and vacancies are to be filled up in the first seven commissioners from time to time as they happen, by a fresh nomination by the remaining or surviving commissioners (6). The owner of any hide wilfully or carelessly gashing any hide or skin, shall forfeit not more than 2s. 6d., nor less than 6d., for the raw hide or skin of any ox, bull, cow, heifer, steer, stirk, or calf; not exceeding 1s. 6d., nor less than 6d., for every horse hide; not exceeding 3s., nor less than 3d., for every hog or pig skin; and 2½d. for every sheep or lamb skin; but the penalties are not to be inflicted for unavoidable damage (7). All hides and calf skins, within five miles of the Royal Exchange, shall be brought to Leadenhall, and sheep and lamb skins, either to Woodsclose, to the Borough, or Whitechapel markets, to be inspected, on pain of forfeiting not exceeding £5, nor less than 20s. (8). Places and hours of inspection are to be appointed for places beyond five miles of the Royal Exchange, within three months after the 27th of May 1808; but nevertheless, butchers at any place within fifteen miles may bring their hides and skins to Leadenhall or the other markets, on giving notice to the inspector of the district (9) Eight inspectors are to be annually appointed for Leadenhall, — four by the

LEATHER.

Regulations relating to London, &c.

Commissioners.

Gashing hides.

Inspection at Leadenhall or Borough.

Eight inspectors at Leadenhall, two for Borough and Whitechapel.

(1) 39 & 40 Geo. 3. c. 66. s. 17.
(2) Id. s. 19.
(3) 41 Geo 3. c. 53. s. 8.
(4) This statute repeals the 43 Geo. 3. c. 106.
(5) 48 Geo. 3. c. 71. s. 2.
(6) Id. s. 3, 13, 19.
(7) Id. s. 20, 1.
(8) Id. s. 22, 23.
(9) Id. s. 24.

LEATHER. seven commissioners before named, in conjunction with the seven nominees of the butchers company, two by the seven curriers, and the other two by the seven cordwainers; two inspectors are also be appointed for Woodsclose,—one by the seven commissioners and seven butchers, and the other by the seven curriers and seven cordwainers; two are also to be appointed for the Borough, and two for the Whitechapel markets; and the commissioners have power to increase the number of inspectors, and make regulations for their attendance (1). The inspectors are to be sworn before the lord mayor, or an alderman, to act without favour, and for their trouble in examining and inspecting, may take as follows: for the hide of every beast, one halfpenny; for the skin of every calf, hog, or pig, one farthing; and for every score of sheep or lamb skins, three-pence; but the commissioners have power to increase these fees, not exceeding, for beasts, one penny; calves, hogs, or pigs, one halfpenny; and for every sheep or lamb, not exceeding one farthing (2). Persons imitating marks, forfeit a sum not exceeding £5 (3). Inspectors are to attend on market days at Leadenhall from six in the morning till five in the evening, from 25th of March to 29th of September, and from seven till four, from 30th of September to 24th of March, and at the other markets for such hours as the commissioners may appoint (4). They are also to provide stamps, for marking hides and skins near the tail with the letter S, if sound, and D, if damaged; and if the penalty or fee be not paid, they may seize the hide and sell it, unless notice of appeal be given to two arbitrators, who are to be appointed by the commissioners on the first Monday in June in every year, whose decision is to be final; and the party against whom the appeal is determined, is to pay a sum not exceeding 5s., nor less than 2s. 6d.; and if the arbitrators differ, they are to call in a third person, and the decision of such arbitrators and third persons, or two of them, shall be conclusive; and the arbitrators are to attend on market days, from the hour of one till the close of the market (5). Arbitrators may also be appointed for the sheep skin markets, if found necessary (6). If inspectors or arbitrators die, others are to be appointed in their room by the commissioners (7). The fees at each of the markets are to be

Oath of inspectors.

Fees thereof.

Marks.

Hours of attendance.

To find stamps.

Arbitrators.

Distribution of fees.

(1) 48 Geo. 3. c. 71. s. 25, 26.
(2) Id. 27, 8, 9.
(3) Id. s. 30.
(4) Id. s. 31.
(5) Id. s. 31, 5.
(6) Id. s. 36.
(7) Id. s. 37.

collected together weekly into one sum, together with the half of the fines for the negligently gashing, and the remaining half, with the whole of all other fines, are to be paid by the inspectors to the treasurers to be appointed by the commissioners (1). The monies received by the treasurer are to be applied in payment of the expences of carrying the act into execution; and the commissioners may direct such rewards as they think fit to be paid to working butchers, for taking off hides and skins whole, and the surplus of the monies received by the treasurer is to be paid as follows; *viz.* one farthing to the butchers company, one farthing to the curriers, one farthing to the cordwainers, to be applied to the use of the poor of the companies, and one farthing to the first mentioned commissioners, to be applied to the use of the poor of the butchers who are not free of the company (2). Persons impeding inspectors are liable to forfeit any sum not exceeding £5, nor less than 10s.; inspectors taking and persons offering bribes, are to forfeit not exceeding 20s.; salesmen are to give an account to their employers of fines imposed, on pain of forfeiting £5; and workmen and servants gashing hides, are liable to repay one half of the fines to their principal (3). Persons selling unstamped hides or skins within five miles of the royal exchange, or any buying such, except in a public market, are to forfeit any sum not exceeding 5s. nor less than 1s. for every calf, hog, or pig skin; and not exceeding 1s., nor less than 6d., for every sheep or lamb skin (4). The penalties may be recovered before one justice, and levied by distress, and for want thereof, imprisonment inflicted for not exceeding one month; but an appeal is allowed to the sessions, and every information must be laid within seven days (5). The qualification of the tanner, and the mode in which he carries on his trade, are next to be considered. No tanner shall by himself or any other use the trade of a shoemaker, currier, leather cutter, or other artificer exercising the cutting or working of leather, on pain of forfeiting every hide and skin by him wrought or tanned during the time, or the value thereof, to be recovered by action (6). And also the further sum of £100, to be recovered according to the excise laws, or by action of debt (7). The statute 13 & 14 Car. 2. c. 7. provides, that every

LEATHER.

*Tanners.*

(1) 48 Geo. 3. c. 71. s. 40, 1.
(2) Id. s. 42.
(3) Id. s. 43, 6.
(4) Id. s. 48.
(5) Id. s. 53.
(6) 48 Geo. 3. c. 60. s. 7. As to the venue for such an offence, see 3 Anstr. 871. 3 M & S. 430.
(7) 52 Geo. 3. c. 94. s. 7.

LEATHER. tanner who shall shave, cut, and rake the upper leather hides all over, or the necks of their backs and butts, shall forfeit the same or the value thereof, and the searchers and sealers may seize them. But any entered tanner may take out of the wooze and shave any hide or skin, or cut and separate therefrom the thin parts thereof, provided that he give six days' previous notice in writing to the officer of excise, under whose survey he shall then be, of his intention or desire so to do, specifying in such notice the day and hour when he will take such hides or skins out of the wooze, and the number to be taken out, and whether the same are to be so taken out for the purpose of being shaved, or for the thin parts to be cut off and separated (1); and if any tanner shall take any hides or skins, or parts or pieces of hides or skins, out of the wooze for either of the purposes aforesaid, or for any other purpose, except by shifting the same into other wooze in the same entered premises, or shall remove or conceal any hide or skin, or any piece or part thereof, not being the shaving thereof, from the sight or view of the officer, so that the duties payable thereon shall not be duly charged, the tanner so offending shall for every such offence forfeit £200 (2), to be sued for and recovered in any of the courts at Westminster, or in the court of exchequer in Scotland, one half thereof to go to the king, and the other half to the informer (3).

*Curriers.* Any currier refusing to curry any leather brought or sent to him by any person dealing or working in leather, or neglecting to curry the same in sixteen days, between September 28th and March the 25th, and in eight days in the remaining part of the year, shall, on conviction before one justice on the oath of one witness forfeit £5, to be recovered by distress, half to the informer and half to the poor, but the justice may mitigate the penalty; persons aggrieved may appeal to the sessions, whose determination shall be final, and no certiorari shall be granted (4). No currier or other person, not being an entered tanner, may use sumack in currying any hide or skin, or preparing or dressing leather, except only for the purpose of colouring leather, on pain of forfeiting £100, one half to go to the king the other

(1) [Penalty of £100] under the excise laws, on every tanner, &c. not keeping separate such hides, &c. taken out of wooze for shaving, from those taken out and hung up to dry, &c. until surveying officer has taken account, 56 Geo. 3. c. 110. s. 6.

(2) 56 Geo. 3. c. 110. s. 4., which repealed the 9 Ann. c. 11. s. 12.

(3) Id. s. 7.

(4) 12 Geo. 2. c. 25. s. 4, 5 6.,

to the informer (1). The wardens of the curriers are not at liberty to visit, search, or seize any leather, hide, or skin, but such as is curried or dressed in London, or three miles thereof, by some member of their own company, nor in any other place but in the open market, or in the shops, houses, or warehouses of such curriers (2). A statute of Jac. 1. enacts, that no person shall incur any penalty for selling or buying sheep skins unsearched or unsealed (3). But the requisite of searching and sealing is alluded to in a later statute (4), which provides all dealers or workers in leather may buy all sorts of tanned leather in open fair or market, whether curried or uncurried, being first searched and sealed, and may cut and sell the same in any small pieces in their open shops, or cut and convert it into other manufactured articles (5). By the 39 & 40 G. 3. c. 66., after reciting, that by reason of the skill and improvement made in dressing leather, many hides formerly supposed to be unfit for making into boots and shoes are now become useful therein, so much of the 2 (vulgo 1) Jac. 1. c. 22. as prohibits shoemakers from putting into boots and shoes, &c. leather made of horse hides, and so much of 9 Ann. c. 11. as relates to the gashing of hides, is repealed.

LEATHER.
Of the searching of leather.
Leather sellers.

The rise and progress of the LINEN MANUFACTURE in the British dominions are traced by Mr. Oddy, who, after mentioning its use and value among the antients, proceeds thus: From Italy the linen manufacture went to France, from thence to Flanders, where it made a stand, afterwards to Holland: from Flanders we received it, as well as the Germans, and it has spread at a very late period from thence to the east and northern parts of Europe. In encouraging the woollen manufacture, at an early period, some attention was paid to that of linen; Henry III., in the 37th year of his reign, ordered the sheriffs of Wiltshire and Sussex to buy for his wardrobe at Westminster 1,000 ells of fine linen, made in each of their respective counties.

LINENS.

(1) 56 Geo. 3. c. 110 s. 5.
(2) 1 W. 3. sess. 1. c. 33. s. 4.
(3) 4 Jac. 1. c. 6. s. 2.
(4) 48 Geo. 3. c. 71. s. 48. ante.
(5) 12 Geo. 2. c. 25. s. 1. 1 W. 3. sess. 1. c. 33. s. 5. See further as to the staple of leather, ante 1 vol. 150, 1. and the exportation thereof, 1 vol. 575, 6. And as to the duties on leather, ante 1 vol. 828, and as to licences and duties for them, 838.; and entry of premises, &c., 840.; and who deemed tanners, tawers, or dressers, 9 Ann. c. 11.; the exportation and importation of gloves which is allowed by 59 Geo. 3. c. 73. and 1 vol. 524, 5. 711.; and table of errata.

LINENS. When Cardinal Wolsey's goods were seized by Henry VIII., amongst other articles were found 1,000 pieces of fine Holland linen, a proof that the manufacture was not carried to much perfection in this country, and by the enormous provision of it, that it was not readily to be had, for in the inventory we do not find woollen cloth, that being a manufacture established here long before, and probably that could be purchased when wanted. The reign of James I. was the first period for encouraging the linen manufacture by authority, from that time it was left to itself till 1696, when an act passed, which may be said to have been the foundation act for encouraging the manufacture of linens in Ireland. Hemp and flax, the growth, and sail cloth, the manufacture of that kingdom, were all imported into England duty free, and so far had the manufacturing of sail cloth increased by this time, that the English manufacture was allowed to be exported duty-free. The linen manufacture in Ireland, was farther promoted by the French protestant refugees, and a sort of compact made in 1698, when the English parliament addressed his Majesty, to discourage the woollen manufacture in Ireland, and to encourage that of linen. An act passed in 1704, by which Irish linens were allowed to be exported from any port in Ireland directly to the British plantations. The manufacture of all kinds of linen goods was very much encouraged, and increased by the establishment of the linen company, which was incorporated by the 4 Geo. 3. c. 37. From that time this manufacture, which before was at a very low ebb, has gradually arrived at its present height and perfection (1). This statute contains a great number of regulations and provisions, respecting the subscribers and their shares, and the appointment of directors and other officers of the said company; but the act was not to extend to Scotland or Ireland (2).

The provisions with regard to linen, may be considered as they affect the persons who may exercise the manufacture; as they relate to the mode of manufacturing of such goods; to the marking and stamping of them; to the description of articles prohibited from being worn or sold, and to the stealing from premises used in the manufacture. By 13 Car. 2. c. 15. any person, native or foreigner, may, without paying any thing, in any place, privileged or unprivileged, corporate or not corporate, set up and exercise the occupation of breaking, hickling,

(1) See on this subject, Adolph. Hist. vol. 3. 248 to 254.

(2) 4 Geo. 3. c. 37. s. 32.

or dressing of hemp or flax; as also of making or whitening of thread; as also of spinning, weaving, making, whitening, or bleaching any cloth made of hemp or flax only; as also the mystery of making twine or nets for fishery, or of stoving of cordage; as also the trade of making tapestry hangings (1), and all foreigners using any of these trades for three years, (taking the oaths of allegiance and supremacy before two justices), shall enjoy all privileges as natural born subjects (2). In order to prevent a pernicious practice much in use, of stretching and heating linen cloth, in order to enlarge it, and afterwards throwing thereon certain liquors, mixed with chalk and other such things, which rendered the cloth finer and thicker to the eye, but in effect loosened and weakened the threads; an act was passed, prohibiting such practices, and any other by which the cloth was rendered worse, on pain of imprisonment for one month at the least, forfeiting all such linen cloth, and paying such fine as the justices think fit (3), and the judges of assize and justices of the peace, or three of them, may hear and determine the same in their sessions, by information, indictment, or upon the traverse of any indictment or presentment found before them (4). Any person seizing such deceitful linen, must either indict or lay an information against the offender at the next sessions before two justices, one being of the quorum, and must enter into recognizance to pursue the same with effect, and to give evidence, and one-half of what he shall recover goes to the king, and the other to himself (5). The justices before whom the offence is tried, shall certify the same by estreat into the exchequer yearly at Michaelmas, as they do other estreats, and thereupon the barons may make process for so much as appertains to the king, in like manner as for other fines (6). All cambrics and lawns made in England or Wales are to be marked and sealed, and persons forging the stamps are guilty of felony (7), but with benefit of clergy (8). Any person causing stamps to be affixed to any foreign linens imported, in imitation of those put on Scotch or Irish linens, forfeits £5 for each piece; and any person selling or exposing to sale, or packing up for sale, any foreign linens (knowing them to be so stamped) as the manufacture of Scotland or Ireland,

LINENS.

Make of the article.

Marks and seals.

(1) 13 Car. 2. c. 15. s. 2.
(2) Id. s. 3.
(3) 1 Eliz. c. 12. st. 2.
(4) Id. s. 2.
(5) Id. s. 3.
(6) Id. s. 4.
(7) 4 Geo. 3. c. 37.
(8) 52 Geo. 3. c. 143.

LINENS.

is liable to the same forfeiture. Whoever affixes any counterfeit stamp on linen of the manufacture of Great Britain or Ireland, in order to vend the same as linens duly stamped, is also liable to forfeit £5 for each piece; and whoever sells or exposes to sale, or packs up for sale, any such linens, knowing them to be so stamped, forfeits the goods, and £5 in addition for each piece (1). The offender may be convicted before one justice on the oath of one witness, and for want of sufficient distress may be imprisoned for six months, unless the penalty be sooner paid; the penalty and forfeiture to go to the informer, after deducting thereout 2s. in the pound, to be paid to the constable executing the warrant (2). *Cambrics* or *French lawns*, legally imported, may be worn or sold, and will not be liable to seizure; nor the person wearing or selling the same, be liable to any penalty (3). If it appeared on the trial, that the yarn, in respect of which the prosecution was instituted, had been taken up and thrown into heaps at the time it was stolen, in order to be carried into the house, it is said the case is not within the statute, as there could be no necessity for the prosecutor to leave his property in such a state of exposure (4). The 51 Geo. 3. c. 41., after reciting that the act of 18 Geo. 2. c. 41., which inflicts a capital punishment for such offences, had been found ineffectual, provides, that every person who shall feloniously steal, by day or by night, any linen, fustian, calico, cotton cloth, or cloth worked, woven, or made of any cotton or linen yarn mixed; or any thread, linen, or cotton yarn, linen or cotton tape, incle, filletting, laces, or any other linen, fustian, or cotton goods, laid or exposed to be printed, whitened, bowked, bleached, or dried, in any whitening or bleaching croft, lands, fields, or grounds, bowking-house, drying-house, printing-house, or other building, ground, or place made use of by any calico-printer, whitster, crofter, bowker, or bleacher, for printing, whitening, bowking, bleaching, or drying the same, to the value of 10s.; or who shall aid or assist, or wilfully or maliciously procure any other person to commit such offence; or who shall buy or receive any such goods, knowing them to be stolen, shall be liable, upon

Cambrics or lawns.

Stealing from calico printing and bleaching grounds.

(1) 17 Geo. 2. c. 30. s. 1.

(2) Id. s. 2.

(3) 27 Geo. 3. c. 13. s. 23. 27 Geo. 3. c. 32. s. 19. For the excise regulations concerning cambrics and lawns made in England, see 4 Geo. 3. c. 37.; as to supervisor or officer of excise to seal them, s. 17, 18. Forfeiture, if found unmarked; and £200 penalty for selling, s. 24.

(4) 4 Bla. Com. 240 (n) 13. 3 Chit. Cr. L., 934.

being convicted thereof, to be transported for life, or for such term not less than seven years, or be imprisoned and kept to hard labour in the common gaol, house of correction, or penitentiary-house, for any term not exceeding seven years (1). The statute 4 Geo. 3. c. 37. enacts, that if any person shall, by day or night, break into any house, shop, cellar, vault, or other place or building, with intent to steal, cut, or destroy any linen yarn or linen cloth, or any manufacture of linen yarn belonging to any manufactory, or the looms, tools, or implements used therein; or shall wilfully or maliciously cut in pieces or destroy any such goods when exposed either to bleach or dry, he shall be guilty of felony, without benefit of clergy. (2)

LINENS.

Linen, &c. Printed linen and calico, &c.

The art of *printing on linen and calico* appears to have been introduced into England in 1676, and was speedily brought to considerable perfection. In 1782, a petition having been presented to parliament by the calico printers, wherein they set forth, that the East India Company had taken advantage of the improvements introduced into their business some years ago, in printing on engraved plates of copper and metals, by sending out plates and workmen to their settlements in India, where the low price of labour enabled them to print their calicoes much cheaper than the petitioners were able to do, and that great quantities of such printed goods were imported, and it being next to impossible to distinguish them from British printed goods, the petitioners were in danger of being ruined, and the trade and revenue of the kingdom were in danger of being greatly injured, the provisions were made which have been already mentioned against the seducing of workmen or the exportation of tools employed in these manufactures (3). It has been already observed, that it is enacted, by the stat. 7 Geo. 1. st. 1. c. 7., that no person shall use or wear any printed, painted, stained, or dyed calico, on pain of £5, to be paid to the informer on conviction on the oath of one witness before a justice, who shall upon information on oath, in six days after the offence,

(1) 51 G. 3. c. 41. by which that part of 18 Geo. 2. c. 27. which took away the benefit of clergy, was repealed; this latter statute also repealed the 4 Geo. 2. c. 16.

(2) 4 Geo. 3. c. 37. s. 16. see ante p. 360. See also 22 Geo. 3. c. 40. s. 1, 3.

(3) Ante 1 vol. 578—581. 22 Geo. 3. c. 60. and see 3 Adolph. 245, 6. 22 Geo. 3. c. 60. s. 1. 3. 5, 6. As to the duties, licenses, entries of places, &c. see ante 1 vol. 838—840, &c.

LINENS.

summon the party, and on his appearance or contempt examine the matter, and on proof, by confession or oath of one witness, determine the same, and on conviction cause the penalty to be levied under his warrant by distress and sale, rendering the overplus, after the charges of distress and sale are first deducted, provided that persons aggrieved may appeal to the next quarter sessions, giving six days notice, and the sessions may hear and determine the same, and their judgment be final (1). And if any person shall offer the same to sale, or any household furniture made up of or mixed therewith, unless for exportation, he shall forfeit £20, half to the informer and half to the poor, to be recovered in the courts at Westminster, with full costs on prosecution in six months, and if he is a steward or other officer of a corporation, he shall also forfeit his office (2). And no person shall use the same in any houshold furniture on the like pain of £20 (3). The act does not extend to calicoes dyed all blue (4). But it extends to stuff made of cotton or mixed therewith, printed or painted, and to calico checquered or striped, and to calico stitched or flowered in foreign parts with any colour, or with coloured flowers made there, (muslins, neckcloths and fustians excepted) (5). But it is lawful to use stuff made of linen yarn and cotton wool manufactured and printed or painted in Great Britain, provided the warp thereof be entirely linen yarn (6). And the stat. 14 Geo. 3. c. 72., after reciting, that doubts had arisen whether stuff wholly made of cotton spun within this kingdom, ought not to be considered as calicoes, and as such, be liable to the like duties, penalties, and prohibitions, enacts, that no greater duty shall be paid for the same than 3d. a yard, and that any person may use the same in apparel or otherwise; that in every piece shall be woven in the warp in both selvedges three blue stripes, each stripe of one thread only; the first of which stripes shall be the first or outermost thread, the second of the stripes shall be the third thread, and the third of the stripes shall be the fifth thread; and each piece shall be stamped at each end with a stamp to be provided by the officers of excise, (and to counterfeit which is a clergyable felony (7),) and instead of the word calico, which stands for foreign calicoes, each piece shall be marked with the words "British manufac-

Stuff of linen yarn and cotton wool.

(1) 7 Geo. 1. st. 1. c. 7. s. 1.
(2) s. 2 & 4.
(3) s. 3.
(4) s. 11.
(5) s. 10.
(6) 9 Geo 2. c. 4.
(7) 14 Geo. 3. c. 72. s. 8. 52 Geo. 3. c. 143.

tory" (1). And if a person expose to sale stuffs wholly made of cotton, and printed, painted, stained, or dyed, except muslins, neckcloths, and fustians, in which such mark is not woven, he is liable to forfeit the same and £50 for each piece (2). The act does not extend to cotton velvets, velverets, or other fustians not manufactured in Great Baitain (3). To import calicoes, muslins, or other goods or stuffs made of linen yarn only, or of linen yarn and cotton wool mixed, or wholly of cotton wool, wherein any such blue stripe is woven in the selvedge, subjects the offender to a forfeiture of the goods and of £10 for each piece (4). The stat. 34 Geo. 3. c. 23. enacts, that every person who shall invent, design, and print, or cause to be invented, designed, or printed, and become the proprietor of any new and original pattern for printing linens, cottons, calicoes, or muslins, shall have the sole right of printing and reprinting the same for three months, to commence from the day of first publishing, which shall be truly printed with the name of the printer or proprietor at each end of every such piece of linen, cotton, calico, or muslin, and that if any calico printer, linen-draper, or other person, within the time limited by the act, shall print, work, or copy such original patterns, or publish, sell, or expose to sale any linen, cotton, calico, or muslin so printed, without the consent in writing of the proprietors signed in the presence of two or more credible witnesses, knowing the same to be so printed or reprinted without the proprietor's consent, such proprietor may, if the offence be committed in England, recover damages and costs in a special action on the case (5). In an action on this statute where the declaration contained no averment, "that the day of first publishing the pattern was printed at each end of the piece of calico," the omission was holden to be aided by verdict, it being stated in the declaration that the defendants pirated the pattern "within the term of three months from the day of the first publishing thereof; and while the plaintiffs were entitled to have the sole right of printing the same" (6). A calico printer, after having discharged his head colour-man, is entitled to the book in which that servant has entered the processes for mixing colours during his service, although many of the processes were the invention of the head colour-man himself (7).

LINENS.

(1) 14 Geo. 3. c. 72. s. 3.
(2) s. 4.
(3) s. 5.
(4) s. 9.
(5) 34 Geo. 3. c. 23.
(6) Mackmurdo v. Smith, 7 Term R. 518.
(7) Makepeace v. Johnson, 4 Taunt. R. 770.

LINENS. The statute 25 Geo. 3. c. 72. provides, that no printer shall begin to print, stain, paint, or dye any such goods, before they have been measured and marked at both ends by the officer, with a frame-mark denoting the measure, on pain of forfeiting the same, and also £20 for every piece by him in whose possession they are found (1). It has been held, that no appeal lies to the sessions from a conviction of two justices for an offence under this provision, although the act contains a general clause of reference (2) to all former excise laws, some of which give such appeal, and incorporates all the powers provided by 12 Car. 2. c. 24. or any other law relating to the excise or inland duties under the management of the commissioners of excise, for managing, mitigating, or adjudging the duties or penalties granted by the act. (3)

PAPER. Licence. The provisions which regulate the making of *paper* are intended for the protection of the revenue. Every maker of paper or pasteboard, and every paper-stainer, is required to take out a licence from the excise-office, for which he pays £4, and to renew the same annually, ten days at least before the end of the year, on pain of forfeiting £20 (4). No maker of pasteboard can carry on the business of a maker of paper, nor can any maker of pasteboard set up or carry on the business of making pasteboard within one quarter of a mile of any mill or manu-

(1) 25 Geo. 3. c. 72. s. 9. Cutting out and defacing any such mark, £50 penalty, s. 11.; and £50 penalty for removing before account taken and each piece stamped and marked at both ends. 10 Ann. c. 19. s. 79. 25 Geo. 3. Persons printing linens, &c. to clear duties every six weeks. 59 Geo. 3. c. 90. As to duties, licenses, entries, searching premises, &c. ante 1 vol. 838, &c. &c. That engine house for carding cotton is rateable to the poor, see 1 T. R. 721.; Cald. 266.; and as to disputes between masters and servants see post, that title.

(2) 25 Geo. 3. c. 72. s. 33.

(3) Rex v. Justices of Surrey, 2 Term R. 504.

(4) By 24 Geo. 3. sess. 2. c. 41. s. 1—7. and 43 Geo. 3. c. 69. sched. A. £2, and additional £2, by 55 Geo. 3. c. 30. which last continued till 5th July 1822 by 59 Geo. 3. c. 32.; as to this licence see ante 1 vol. 838. note 6; as to the renewal of a licence, 1 vol. 837, 839, and the transfer to executors, &c. for the residue of a term, 53 Geo. 3. c. 103. s. 6. ante 1 vol. 837—839. note 5.; as to the entry of place and name of maker, &c. ante 840. n. 12.; the dealers' book, 1 Geo. 4. c. 58. 56 Geo. 3. c. 103. s. 1. &c. ante 1 vol. 842, 3.; the power of the officers to enter and take account, &c. 1 Geo. 4. c. 58. ante 1 vol. 846.; paper and utensils liable to duty, &c. ante 1 vol. 846. 34 Geo. 3. c. 20. s. 27. The 1 Geo. 4. c. 58. is the most recent act for regulating the makers of paper and pasteboard.

factory for the making of paper, on pain of £100 (1). Scale-board-makers are liable to the regulations imposed on paper-makers. Scaleboard is to be charged as millboard (2). But the provisions prohibiting a maker from carrying on the business of a stationer at any mill, or in premises within two miles of a mill, are repealed by the 1 Geo. 4. c. 58. Stationers are thereby required not to carry on business at a mill, or in any premises within one mile of any mill, under a penalty of £200 (3). On account of the duties, paper is distinguished as of the first or the second class; millboard, buttonboard, &c. bear their different denominations. Persons buying paper liable to seizure, may, on giving information, receive the value which they paid for it (4). All brown paper, made of old ropes or cordage only, without separating or extracting the pitch or tar, and without any mixture of other materials, is deemed of the second class, and charged with duty accordingly; and all other paper (except glazed paper for clothiers and hot-pressers) (5) is deemed of the first class (6). No pasteboard can be made of any material except paper, which has been charged with the full duties of excise, and has not been used for any purpose, on pain of forfeiting both goods and materials, and also the sum of £100 (7). But it is enacted by the statute 56 Geo. 3. c. 103. s. 13., that the provisions of the 42 Geo. 3. c. 94. s. 11 & 12, respecting the materials from which pasteboard is to be made, shall apply only to such makers of pasteboard as are not makers, or concerned in the trade of a maker of paper, millboard, buttonboard, button-paper, glazed paper, or sheathing paper; and that it shall be lawful for every maker of paper, millboard, buttonboard, button-paper, glazed paper, or sheathing paper, to make, at his entered paper-mill, any pasteboard subject to the duties therein mentioned, according to the qualities thereof, from paper, millboard, &c. made by him at such mill before it has been charged with duty (8). There is allowed to every maker of pasteboard, not being a maker or concerned in the trade of a maker of paper, millboard,

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(1) 42 Geo. 3. c. 94. s. 13. as to who shall be deemed pasteboard makers, and as to licence and entry, and notice of making, removing, account rendered, &c. 1 Geo. 4. c. 58. s. 18.

(2) 1 Geo. 4. c. 58. s. 21. See also last note.

(3) 1 Geo. 4. c. 58. s. 17.

(4) 1 Geo. 4. c. 58. s. 15 & 16.

(5) See 56 Geo. 3. c. 103. s. 10.

(6) 42 Geo. 3. c. 94. s. 10.

(7) 42 Geo. 3. c. 94. s. 11. Before maker begins to make paper into pasteboard he must produce the paper in the wrappers to the officer, and 24 hours notice to be given, penalty £100. s. 12.

(8) 56 Geo. 3. c. 103. s. 13.

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[illegible]board, &c. who shall make pasteboard, and be charged with the duties thereon, from paper, &c. for which the duties have been paid, and which have been taken account of by the officer before the making thereof into pasteboard, upon oath being made by such maker or his principal workman, to be administered by the collector or supervisor of excise, that such pasteboard has been wholly made from duty-paid paper, &c. or previously produced and taken account of (1). The mode of weighing is pointed out by the 34 Geo. 3. (2), the maker being required to give notice in writing to the proper officer of excise (3).

Packing up paper, &c.

By a recent provision, every maker, in tying up any ream or parcel of paper, millboard, buttonboard, button-paper, glazed paper sheathing paper, or pasteboard, must make use of one entire and unknotted string; and such string must pass over the length and across the middle of each ream of paper, so that the knot, formed by tying together the two ends, may be on the middle of one of the sides of such ream; and such string must pass over the length, and twice, at equal distances, across the breadth of each parcel of millboard, buttonboard, button-paper, glazed paper, sheathing paper, or pasteboard, so that the knot, formed by tying together the two ends, may be in the middle of such crossings, and on one of the sides of such parcel; and every ream and parcel which is found tied up otherwise than as aforesaid, is to be forfeited, and may be seized by any officer of excise (4).

Marking parcels of paper.

Every maker shall write or print, in large and legible characters, upon the label therein directed to be affixed on every ream of paper, and upon every parcel of millboard, &c., the weight of such ream or parcel; and if any maker neglect to do so, or if any such ream of paper or parcel shall, on being re-weighed by an officer of excise, be found to weigh less or more than 5 per cent. under or over the weight so marked, written, or printed on such ream or parcel, it shall be forfeited, and the maker shall be fined £50. Every maker of paper or millboard, &c. is required, as soon as it has been made and tied up, and before it is produced (5) to the officer of excise to be weighed

(1) 56 Geo. 3. c. 103. s. 15.
(2) 34 Geo. 3. c. 20. s. 7.
(3) Id. ibid.
(4) 56 Geo. 3. c. 103. s. 4.
(5) This was so by the 56 Geo. 3. c. 103.; but by 1 Geo. 4. c. 58. s. 6. from 5 Jan. 1821, so much of the recited act as relates to the label to be affixed to the wrapper before the paper be produced to the officer to be weighed and stamped, repealed. Commissioners of excise to issue to the supervisor of the district a sufficient number of labels to be used, with with which the officer shall sup-

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and stamped, to denote the charge of duty; firmly and permanently to fix, with warm paste made of glue, flour, and water only, a label made of tissue paper, of at least four inches square, and of a different colour from the cover or wrapper, to and upon one of the sides of the wrapper of each ream of paper, and over the knot formed by tying together the two ends of the string thereof; and also firmly and permanently to fix as before, on every parcel of millboard, buttonboard, button-paper, glazed paper, sheathing paper, and pasteboard, a label made of tissue paper, of at least nine inches square, over the knot formed by tying together the two ends of the string, and to and upon another larger piece of paper of a different colour, placed on the top or bottom of such parcel, and beneath such knot, and between the string and outer sheet of such parcel; and shall write or print on each such label, in distinct and legible characters, immediately after the same has been so affixed, and is become perfectly dry, the progressive number of the ream or parcel, and in words at length, the class and kind of the paper, &c.; and if the paper has been divided, the number of pieces into which the original sheet has been divided, and the weight of the ream or parcel; and shall also write, print, or mark thereon, the number or letter by which the mill at which such paper, &c. has been manufactured shall be distinguished by the book or paper delivered to such maker, and then in use; and if any maker shall neglect to comply with these regulations, he shall for every offence forfeit £200 (1).

Printing paper for hangings.

No person shall print any paper to serve for hangings or other uses, except such in respect whereof the duty chargeable upon paper of the first class hath been charged, nor unless such paper have been previously produced to the officer, inclosed in the original wrapper in which it was charged, and with the impression of the stamp denoting such charge, and the name of the

ply the maker; one of such labels shall be so pasted on the wrapper that when the ream is tied up the label shall be on the top, with the end thereof for receiving the impression of the departure stamp, class, and weight to be put on such label by the maker; and when the officer weighs the paper he shall put thereon the progressive number on such ream, &c. and the quarter, and year when weighed. Officer to write on such label the day of the month, and afterwards stamp the ream or parcel. This parcel states how quarters are to be distinguished. Penalty on maker destroying such label; making false entry thereon; using it on any other wrapper; tying up paper, &c. in any wrapper without such label; and not marking on it the particulars before mentioned, £200. By s. 7. departure stamps are to be issued, and the mode of using them provided.

(1) 56 Geo. 3. c. 103. s. 6. See note supra.

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officer, and date of the charge, and the class of such paper marked, and remaining visibly thereon; and such printer shall open every ream and bundle of such paper in the presence of such officer, who shall thereupon take an account of the quantities and dimensions thereof, and stamp the same according to law (1). If any maker cut or diminish paper, before it is taken account of, weighed and charged, he forfeits £50 besides the paper itself. All paper made in Great Britain, or in Ireland, and imported from thence as soon as made, is to be made up into quires, each quire to consist of twenty-four sheets, and such quires to be made up into reams of twenty quires each; and all pasteboard, millboard, scaleboard, and glazed paper are to be made up in regular parcels, containing each even dozens of sheets of the same denominations and dimensions, and not less than twenty-four, nor more than seventy-two such sheets in each parcel, the same being tied up and marked according to the directions of the statute 34 Geo. 3. c. 20. s. 7. &c. amended by the 56 G. 3. c. 103. under the penalty of £200, and loss of the same (2). Paper may however be made into quires without folding the same, the quires being separated when made up into a ream by a slip of coloured paper placed between each quire, and visible on the outside of the ream; and it is provided, that the outside quires of each ream shall consist of not less than twenty, nor more than twenty-four sheets, at the option of the maker (3). Any maker may divide paper with a knife or other instrument, before the same shall be put into reams, provided the quantity chargeable with the duty is not diminished, and the words "cut paper" are marked on the wrapper, to distinguish it (4). By the 34 Geo. 3. c. 20., as soon as the officer is satisfied that the conditions of the act have been complied with, he is to stamp every bundle to denote the duty, or affix on each a proper label to denote the duty being so charged, and write his name upon each, together with the date, day, or year on which the duty was charged; and wilfully defacing the stamp exposes the offender to a penalty of £50 (5). By a new regulation it is required, that on the label, when perfectly dry, but not before, there shall be impressed by the officer, after he has weighed the

Making up Paper, &c.

(1) 41 Geo. 3. (U.K.) c. 8. s. 6.

(2) 42 Geo. 3. c. 94. s. 15. The same penalty for removing from any entered place. See directions for tying up paper, &c. 56 Geo. 3. c. 103. s. 4.

(3) Id. ibid.

(4) Id. s. 16. 56 Geo. 3. c. 103. s. 3. £50 penalty for not distinguishing, &c.

(5) 34 Geo. 3. c. 20. s. 10.

paper, &c., part of the stamp, to denote the charge of duty; the other part being impressed upon the wrapper of the ream of paper, or upon the larger piece of paper to which the label is affixed upon each parcel of millboard, &c. (1). Any officer may open such a ream or bundle of papers, and take out a sample, not exceeding one sheet, out of each quire, paying a market price for it, if demanded; and if he discover any paper of a different class from that denominated on the cover, it shall be forfeited and seized, and the person who has marked any such false class, shall forfeit £50 (2). The penalty of £500 was imposed upon persons guilty of the offence of forging the stamps for wrappers, or labels on parcels of paper (3); but this was repealed as to penalty, and the offender was punishable by death (4): but this was again repealed, as also the above-mentioned penalty of £500; and it was provided, that every person guilty of counterfeiting, or causing to be counterfeited, any stamp, device, or label, provided or directed to be used in pursuance of the 34 Geo. 3. c. 20., should be adjudged guilty of felony, and for such offence should be transported, as a felon, for seven years (5). Paper-makers must keep scales and weights, and assist the officer in the use of the same (6). Stationers and dealers in paper are not to receive paper but in an entire ream, and properly inclosed (7); nor are they to return the wrappers, covers, or labels, but destroy the same on opening the paper; and a penalty is imposed on makers having any which have been used before (8). In order to secure the payment of the duties on paper, a particular time is limited, after weighing the same, before which none may be removed (9), except from one mill to another, which may be done on giving a proper notice (10). The making of paper with water-marks to resemble the paper used by the bank of England, is punishable by transportation for

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Forging Stamps, &c.

(1) 56 Geo. 3. c. 103. s. 6.
(2) 34 Geo. 3. c. 20. s. 11.
(3) Id. s. 8, 9.
(4) 46 Geo. 3. c. 112. s. 2.
(5) 47 Geo. 3. sess. 2. c. 30. s. 12, 13. See 49 Geo. 3. c. 81. s. 1. But by 1 Geo. 4. c. 58. s. 12. these provisions were rescinded, and by s. 13. the penalty for persons counterfeiting stamps, &c. used for securing the duties on paper, &c. having them in possession; using them on wrappers or labels, or selling paper with counterfeit stamps, &c. £1,000.; and for every wrapper, &c. £500.
(6) 34 Geo. 3. c. 20. s. 19, 20.
(7) Id. s. 24.
(8) Id. s. 25.
(9) 24 Geo. 3. c. 18. sess. 2. s. 5. 34 Geo. 3. c. 20. s. 14, 15. 42 Geo. 3. c. 94. s. 15.
(10) 34 Geo. 3. c. 20. s. 16.

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14 years (1). And the making any frame, mould, or instrument for manufacturing paper with the words "excise office" visible in the substance of the paper, as also the making of paper with such words, unless by proper authority, or paper with marks forged to resemble permits, are offences punished by death, as in cases of felony, without benefit of clergy (2).

Printing Books and Newspapers.

The statutes which regulate the publication and sale of literary compositions and engravings, have already been fully considered. A late act of the 60 Geo. 3. c. 9., which is entitled an act to subject certain publications to the duties of stamps upon newspapers, and to make other regulations to restrain the abuses arising from the publication of blasphemous and seditious libels, after reciting that pamphlets and printed papers containing observations upon public events and occurrences, tending to excite hatred and contempt of the government and constitution of these realms as by law established, and also vilifying our holy religion, have lately been published in great numbers, and at very small prices, and it is expedient that the same should be restrained, provides, that after ten days from the passing of the act (*viz.* 30th Dec. 1819), all pamphlets and papers containing any public news, intelligence, or occurrences, or any remarks or observations thereon, or upon any matter in church or state, printed in any part of the united kingdom for sale, and published periodically, or in parts or numbers, at intervals not exceeding 26 days between the publication of any two such pamphlets or papers, parts or numbers, where any of the said pamphlets or papers, parts or numbers respectively shall not exceed two sheets, or shall be published for sale for a less sum than sixpence, exclusive of the duty by this act imposed thereon, shall be deemed and taken to be newspapers within the true intent and meaning of the statutes 38 Geo. 3. c. 78., 55 Geo. 3. c. 80., 55 Geo. 3. c. 185., 56 Geo. 3. c. 56., and all other acts of parliament in force relating to newspapers, and be subject to such and the same duties of stamps, with such and the same allowances and discounts, as newspapers printed in Great Britain and Ireland respectively now are subject unto under and by virtue of the said recited acts of parliament; and shall be printed, published, and distributed, under and sub-

Stamp Duty.

(1) 45 Geo. 3. c. 89. 41 Geo. 3. U. K. c. 39. See as to making paper with banker's name forged, 47 Geo. 3. c. 47. s. 1.; and see 1 Geo. 4. c. 92. to prohibit making plates resembling any part of bank note, &c.

(2) 52 Geo. 3. c. 143. s. 9.

ject to all such and the like rules, regulations, restrictions, provisions, penalties, and forfeitures, as are contained in the said recited acts, or either of them, or in any other act or acts of parliament now in force in Great Britain or Ireland respectively, relating to newspapers printed, published, dispersed, or made public in the united kingdom; and the said recited acts of parliament, and all other acts of parliament now in force in Great Britain or Ireland respectively, relating to any newspapers, or containing any regulations relating thereto, and all the clauses, provisions, regulations, restrictions, penalties, and forfeitures therein respectively contained, and in force at the passing of this act, shall, except when the same may be altered by this act, be applied and put in force in relation to all such pamphlets and printed papers aforesaid, as fully and effectually as if all such clauses, provisions, regulations, restrictions, penalties, and forfeitures, were respectively, severally, and separately re-enacted in and made part of this act; and the said recited acts, and all other such acts of parliament as aforesaid, and this act, shall, as to all the purposes of carrying this act into execution, be construed as one act (1). No quantity of paper, less than a quantity equal to 21 inches in length, and 17 inches in breadth, in whatever way or form the same may be made, or may be divided into leaves, or in whatever way the same may be printed, shall be deemed or taken to be a sheet of paper within the meaning and for the purposes of this act (2). No cover or blank leaf, or any other leaf upon which any advertisement or other notice shall be printed, shall, for the purposes of this act, be deemed or taken to be a part of any such pamphlet, paper, part, or number aforesaid (3). All papers and pamphlets containing any public news, intelligence, or occurences, or any such remarks or observations as aforesaid, printed for sale, and published periodically, or in parts or numbers, at intervals exceeding 26 days between any two such pamphlets or papers, parts or numbers, and which said pamphlets, papers, parts, or numbers respectively shall not exceed two sheets, or which shall be published for sale at a less price than sixpence, shall be first published on the first day of every calendar month, or within two days before or after that day, and at no other time; and that if any person or persons shall first publish, or cause to be published, any such pamphlet, paper, part, or number aforesaid, on any other day or time, they

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Description of paper.

Time of publishing.

(1) 60 Geo. 3. c. 9. s. 1.
(2) s. 2.
(3) s. 3.

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shall forfeit for every such offence £20 (1). Upon any pamphlet or paper, containing any public news, intelligence, or occurrences, or any remarks or observations thereon, or upon any matter in church or state, printed in any part of the united kingdom for sale, and published periodically, or in parts or numbers, at intervals not exceeding 26 days between the publication of any two such pamphlets or papers, parts or numbers, and upon every part or number thereof, shall be printed the full price at which every such pamphlet, paper, part, or number, shall be published for sale, and also the day on which the same is first published; and if any person shall publish any such pamphlet, paper, part, or number without the said price or day being printed thereon, or if any person shall, at any time within two months after the day of publication printed thereon as aforesaid, sell or expose to sale any such pamphlet, paper, part, or number, or any portion or part of such pamphlet, paper, part, or number, upon which the price so printed as aforesaid shall be 6d., or above that sum for a less price than the sum of 6d., every such person shall for every such offence forfeit and pay the sum of £20 (2). But nothing contained in this act to extend or be construed to extend to subject any person publishing any pamphlet or paper to any penalty for any allowance in price made by the person for whom and on whose behalf and for whose profit, benefit, or advantage the same has been first published to any bookseller, or distributor, or other person to whom the same shall be sold for the purpose of retailing the same (3). All pamphlets and papers by this act declared to be subject to the stamp duties upon newspapers to be freed and discharged from all the stamp duties and regulations contained in any act of parliament relating to pamphlets (4). No person from thirty days after the passing of this act shall print or publish for sale any newspaper, or any pamphlet, or other paper containing any public news, intelligence, or occurrences, or any remarks or observations thereon, or upon any matter in church or state, which shall not exceed two sheets, or which shall be published for sale at a less price than 6d., until he or she shall have entered into a recognizance before a baron of the exchequer in England, Scotland, or Ireland respectively, as the case may be, if such newspaper or pamphlet, or other paper aforesaid shall be printed in London or Westminster, or in Edinburgh or

Marking price, &c. upon paper.

Recognizance.

(1) 60 Geo. 3. c. 9. s. 4.
(2) s. 5.
(3) s. 6.
(4) s. 7.

Dublin, or shall have executed in the presence of and delivered to some justice of the peace for the county, city, or place where such newspaper, pamphlet, or other paper shall be printed, if printed elsewhere, a bond to his Majesty, his heirs, and successors, together with two or three sufficient sureties, to the satisfaction of the baron of the exchequer taking such recognizance, or of the justice of the peace taking such bond, every person printing or publishing any such newspaper, or pamphlet, or paper aforesaid, in the sum of £300 if such newspaper, pamphlet, or paper shall be printed in London, or within twenty miles thereof, and in the sum of £200 if such newspaper, pamphlet, or paper shall be printed elsewhere in the united kingdom, and his or her sureties in a like sum, in the whole conditioned, that such printer or publisher shall pay to his Majesty, his heirs and successors, every such fine or penalty as may at any time be imposed upon and adjudged against him or her by reason of any conviction for printing or publishing any blasphemous or seditious libel at any time after the entering into such recognizance or executing such bond, and that every person who shall print or first publish any such newspaper, pamphlet, or other paper, without having entered into such recognizance, or executed or delivered such bond with such sureties as aforesaid, shall for every such offence forfeit £20 (1). In every case in which any surety or sureties in any such recognizance or bond shall have been required to pay, and shall have paid the whole or any part of the sum for which he, she, or they shall have become sureties, or in case any such surety or sureties shall become bankrupt or be discharged under any insolvent act, then and in every such case, the person for whom such surety or sureties shall have been bound shall not print or publish any newspaper or pamphlet, or other paper aforesaid, until he or she shall, upon being required so to do by the commissioners of stamps for Great Britain and Ireland respectively, have entered into a new recognizance, or executed a new bond with sufficient sureties, in the manner and to the amount aforesaid; and in case he or she shall print or publish any such newspaper or pamphlet, or other paper aforesaid, without having entered into such new recognizance, or executed such new bond as aforesaid, having been required so to do as aforesaid, he or she shall forfeit for every such offence £20 (2). If any surety or sureties shall be desirous of withdrawing from such recognizance or bond, it shall and may be lawful to and for

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Sureties.

(1) 60 Geo. 3. c. 9. s. 8. (2) s. 9.

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him or them so to do upon giving twenty-six days' previous notice in writing to the said commissioners of stamps respectively, or to the distributor of stamps of and for the district where the printer or publisher for whom he or they is or are surety or sureties shall reside, and also to such printer or publisher, and that in any such case, every such surety or sureties, from and after the expiration of such notice, shall not be liable upon the said bond or recognizance, other than and except for any penalty or penalties before that time imposed or incurred, and for which he or they would otherwise have been liable under the said recognizance or bond, and that then and in every such case, the person for whom such surety or sureties shall have been bound, shall not print or publish any newspaper or pamphlet, or other paper aforesaid, until he or they shall have entered into a new recognizance or executed a new bond, with sufficient sureties, in the manner and to the amount aforesaid, and in case he or she shall print or publish any such newspaper or pamphlet, or other paper aforesaid, without having entered into such new recognizance or bond as aforesaid, he or she shall for every such offence forfeit the sum of £20 (1). But no such bond is liable to any stamp duty (2).

Stamp.

Lists of all the recognizances which have been entered into in the respective courts of exchequer in England, Scotland, or Ireland, shall four times in every year be transmitted to the commissioners managing the stamp duties in Great Britain and Ireland respectively, as the case may be, by the respective officers recording such recognizances in such respective courts, and all bonds executed under the provisions of this act, shall, within ten days at the farthest after the execution thereof, be transmitted to the said commissioners respectively by the justices of the peace, to whom the same shall have been respectively delivered (3).

Sending copy to commissioners, etc.

Every such printer or publisher of any such pamphlet or paper, must on the day the same is published, or within six days after, deliver a copy thereof to the commissioners of stamps, or next distributor of stamps, signed by himself, with his place of abode, the commissioners or distributor paying the retail price of such paper, and in case of his neglecting so to deliver the same, he shall for every offence forfeit £100 (4). The commissioners or distributor refusing to receive or pay for such pamphlet or paper when offered, must grant a certificate of such refusal, which will

(1) 60 Geo. 3. c. 9. s. 10.
(2) s. 11.
(3) s. 12.
(4) s. 13.

be a discharge to the printer or publisher from the penalty (1). Any person selling or exposing to sale any pamphlet or other paper not being duly stamped, if required to be stamped, forfeits for every offence £20 (2). Any person brought up as directed by this act, on a charge of printing or publishing a seditious libel, in order to give bail on such charge, may be bound to his good behaviour during the continuance of the recognizance (3). Penalties to be recovered by action of debt before two justices, but no more than to the amount of £100 in one day to be recovered before two justices (4). The justices have power to summon witnesses and examine upon oath, and if the penalties be not immediately paid, to commit the offender for any time not exceeding six months, but upon giving security an appeal may be had to the justices at sessions, who have a power to mitigate the penalties, so as not to reduce them to less than one fourth over and above the expences (5). Persons being summoned to give evidence and refusing to attend, or when attending refuse to give evidence, are subject to a penalty of £20 to be levied as the other penalties (6). A form of conviction is given by the act (7), which conviction is not removable by certiorari or otherwise, but execution may be had thereon, notwithstanding any such writ of certiorari (8). All proceedings under this act are to be void, unless commenced and taken in the following manner: in England, in the name of the king's attorney general, in Ireland, in the name of the attorney general, and in Scotland, in the name of the king's advocate, or in either of the three kingdoms, in the name of the solicitor or other officer of his Majesty's stamp duties respectively belonging to each (9). The duty to be under the management of the commissioners of stamps (10). The provisions of former acts respecting the payment of duties and allowances, and discounts, except so far as they are altered by this act, to extend to this act (11). The monies arising from the duties are to be paid into the exchequer at Westminster and Dublin respectively, and are to be carried to and made part of the consolidated fund of Great Britain and Ireland (12). But nothing in this act shall extend to acts of parliament, proclamations, orders of council, forms of prayer and thanksgiving, and

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Binding to good behaviour.

Power of justices.

Proceedings under act.

Exception.

(1) 60 Geo. 3. c. 9. s. 14.
(2) s. 15.
(3) s. 16.
(4) s. 17.
(5) s. 18.
(6) s. 19.
(7) s. 20.
(8) s. 21.
(9) s. 22.
(10) s. 23
(11) s. 24.
(12) s. 25.

PAPER AND PRINTING.

acts of state ordered to be printed by his Majesty, his heirs or successors, or his or their sufficient and authorized officer, or to any printed votes or other matters by order of either house of parliament, or to books commonly used in the schools of Great Britain or Ireland, or books or papers containing only matters of devotion, piety or charity, or daily accounts or bills of goods imported and exported, or warants or certificates for the delivery of goods, and the weekly bills of mortality, or to papers containing any lists of prices current, or of the state of the markets, or any account of the arrival, sailing, or other circumstances relating to merchant ships or vessels, or of any other matter wholly of a commercial nature, provided such bills, lists, or accounts do not contain any other matter than what hath been usually comprised therein, or to the printers or publishers of the foregoing matters, or any or either of them (1). And no work reprinted and republished in parts or numbers, whether wholly reprinted or abridged, (so as such work was first printed and published two years at least previously to such reprinting and republishing, and not in parts or numbers), is liable to the stamp duties imposed by this act. (2)

PEWTER AND BRASS WARES, &c.

It has been observed, that during the reigns of Henry VII., Henry VIII., and Edward VI., several different statutes were passed, for the purpose of preventing, as well the importation of manufactured goods of tin or PEWTER (3), as the exportation of certain metals in an unmanufactured state (4); as also to prevent any goods being manufactured within the realm, of tin, pewter, or brass of an inferior quality, on pain of forfeiture, half to the king and half to the finder thereof (5). The master and wardens of the craft of pewterers, and where there are none such, the head and governors of the city or borough, may appoint *searchers;* and the justices, at Michaelmas sessions, shall appoint two persons, having experience therein, to search within

(1) 60 Geo. 3. c. 9. s. 26.

(2) s. 27. For the provisions and regulations respecting newspapers in general, see 55 Geo. 3. c. 185. 37 Geo. 3. c. 90. 38 Geo. 3. c. 78. 34 Geo. 3. c. 72. 29 Geo. 3. c. 50. 16 Geo. 2. c. 26. and 10 Ann. c. 19.

(3) See 25 Hen. 8. c. 9. ante, 1 vol. 529. where by an evident error of the press, c. 19. is put for c. 9. and 25 Hen. 8. c. 4. s. 2. for 25 Hen. 8. c. 9. s. 2. 33 Hen. 8. c. 4. See Dickinson's Justice of the Peace, tit. Pewter, where it is said these statutes are loosely worded and now nearly obsolete.

(4) 2 & 3 Edw. 6. c. 37. but see repeal by 5 & 6 W. & M. c. 17.

(5) 4 Hen. 8. c. 7. s. 3.

the county. And of all such unlawful pewter or brass as they find, half goes to the king and half to the searchers (1). In default of the masters and wardens searching, the search may be made by any person having competent knowledge in the business, under the supervision of the mayor or other head officer of cities or boroughs.

PEWTER AND BRASS WARES.

PLATE.

The dealers in PLATE are regulated by various provisions, which point out its standard fineness, the mode of assaying it, and the obligation on the maker to have it assayed; together with the marks used, and other precautions adopted, for securing the duties upon it. The fineness is pointed out by the statute 6 Geo. 1. c. 11., which enacts, that plate may be made either according to the old standard of 11 oz. and 2 dwts. fine silver in every pound troy, or according to the new standard of 11 oz. and 10 dwts. And it is rendered unlawful to make any vessels of silver-plate, or manufactures of silver, of a coarser alloy than what is specified in the act, under the penalties and forfeitures prescribed by the laws in being concerning wrought plate (2). The sterling alloy is 11 oz. 2 dwts. of fine silver, and 18 dwts. of alloy, in the pound weight troy, which the mint indenture calls the "right old standard" for the silver monies of England; and it was in use before the conquest, as appears by the several treatises on silver coins. But the statute 8 W. 3. c. 8. s. 9., which was made to encourage the then silver coinage, abolished or suspended the old standard of 11 oz. and 2 dwts., and established the new standard of 11 oz. 10 dwts. in its stead; and inflicted a forfeiture of the plate, or the value thereof, on persons working, or putting to

Standard fineness.

(1) 19 Hen. 7. c. 6. 4 Hen. 8. c. 7. s. 6. As to the title of the 19 Hen. 7. see Barrington on Stat. p. 450. ed. 1796. By that statute certain wares are also required to be made of the assize within London, and marked with the maker's mark; in Dick. J. tit. Pewter, it is said that these statutes are loosely worded, and are now nearly obsolete.

(2) 6 Geo. 1. c. 11. s. 41. 12 Geo. 2. c. 26. s. 1. This applies only to silver; and see the penalties of forfeiture of value, &c. by 2 H. 6. c. 14. 18 Eliz. c. 15. 8 W. 3. c. 8. s. 9. cited 1 Cowp. 297, 8. Penalty £10 and six months' imprisonment by 12 Geo. 2. c. 26. which does not extend to jewellers' work or jointed night ear-rings of gold, or gold springs of lockets, s. 2. Indemnity on discovering name and abode of maker or worker, s. 3. By the 1 Geo. 4. c. 14. no drawback is allowed on the exportation of plate gold made in Great Britain into rings, nor on any article of gold manufactured in Great Britain, unless it exceed the weight of two ounces.

PLATE.

sale, or exchanging any manufacture of silver less in fineness than 11 oz. 10 dwts., or until marked with the new sterling marks (1). But the statute 6 Geo. 1., as above mentioned, revived and established the old standard of 11 oz. 2 dwts. To prevent illegal adulteration, an old statute of the 28 Edw. 1. c. 28. provides, amongst other things, that no goldsmith of England, nor any elsewhere, within the king's dominions, shall make any manner of vessel, jewel, or any other thing of gold and silver, except it be of good and true alloy; that is to say, gold of a certain touch, and silver of the sterling alloy, or of better, at the pleasure of him to whom the work belongs; and that none work worse silver than money. The punishment provided by this statute was imprisonment, and ransom, at the king's pleasure; and though parts of the act have been repealed, yet the punishment it annexes to such an offence is not, the penalties provided by other acts of parliament being only cumulative and additional (2). As to gold, it is lawful for any person making or dealing in gold wares in Great Britain, to work or make any gold vessel, plate, or manufacture of gold, of the standard of 18 carats of fine gold in every pound troy, and to sell or export any such gold article of the standard of 18 carats of fine gold in every pound troy (3).

Assaying and marking.

Gold and silver wares are required to be assayed. Every working gold or silversmith is required to send to the assay office all plate made by him, to be touched or assayed, and to send with every parcel a written note, containing the day of the month and year, the name of the maker and place of his abode, and also the species in such parcel, and the number of each species, with the total weight of each parcel, and the duty payable for it (4). Nor can any person expose to sale, or sell, or export gold or silver wares, until they (being, if of gold, of the standard of 22 carats of fine gold per lb. troy, or if of silver, of the standard of 11 oz. and 2 dwts.) have been marked as follows; that is to say, with the mark of the worker, being the first

(1) Rex v. Jackson, 1 Cowp. 298.

(2) Rex v. Jackson, 1 Cowp. 297. At common law knowingly exposing to sale and selling wrought gold under the sterling alloy as and for gold of the true standard weight, which is indictable in goldsmiths, is only a private imposition in a common person. Cowp. 323.

(3) 38 Geo. 3. c. 69. s. 1. ante, 1 vol. 583. note 6.

(4) 24 Geo. 3. c. 53. s. 4. As to the places for assaying, and at which a plate-worker must enter his name and place of abode, and for selling before assaying or marking, forfeits the same and the value, see 12 & 13 W. 3. c. 4. 1 Ann. st. 1. c. 9. 13 Geo. 3. c. 52. and infra.

letters of his name and surname, and with these marks of the company of goldsmiths in London, *viz.* the leopard's head, the lion passant, and a distinct variable mark to denote the year, or with the mark of the worker, and the marks appointed to be used by the assayers at York, Exeter, Bristol, Chester, Norwich, or Newcastle-upon-Tyne; or plate (being of the standard of 11 oz. 10 dwts. of fine silver per lb. troy), with the mark of the worker, being the first letters of his name and surname, and with these marks of the company, *viz.* the lion's head erased, the figure of a woman called Britannia, and the mark or letter to denote the year, or with the mark of the worker, and the marks of one of these cities or towns, on pain of forfeiture of £10; on default of payment, the offender to be committed to the house of correction for any time not exceeding six months, or until payment (1). There are, however, several exceptions of the smaller sorts of gold wares (2). An additional mark is required by the statute 24 Geo. 3. c. 53., which provides that all plate shall be marked with a new mark of the *king's head*, besides the old marks, and the duties shall be paid previously to the marking of it (3). No gold or silver plate can be sold or exchanged until so marked, under a penalty of £50 (4). This mark appears to have been designed to protect the revenue. The duties may be returned for all plate defaced for being coarser than the standard (if no fraud appear); and an allowance of one-fifth part will be made for goods sent to be assayed in a rough state (5). The duties do not extend to any jewellers' work, except mourning rings, nor to any jointed night ear-rings of gold, or gold springs of lockets, or to goods excepted by the 12 Geo. 2. c. 26. s. 6. (6). The old duties were repealed by the 55 Geo. 3. c. 185., and others substituted in lieu thereof. To forge (7), or to transpose (8) stamps provided to denote the payment of the duties, is felony without benefit of clergy. A licence must be taken out by a person dealing in such wares. (9)

PLATE.

There is a great variety of legislative enactments with reference to the SERVANTS employed in the manufactories, by which

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(1) 12 Geo. 2. c. 26. s. 5. and see 6 Geo. 1. c. 11. s. 41.
(2) 12 Geo. 2. c. 26. s. 6. which also extended to silver wares, but was repealed in this respect by 30 Geo. 3. c. 31. s. 1.
(3) 24 Geo. 3. c. 53. s. 1 and 5.
(4) Id. s. 8.
(5) Id. s. 7. 10.
(6) Id. s. 9.
(7) 55 Geo. 3. c. 185. s. 7.
(8) 52 Geo. 3. c. 143. s. 8.
(9) 43 Geo. 3. c. 69. 55 Geo. 3. c. 30. 59 Geo. 3. c. 32. ante, 1 vol. 833, 4.; to what places the licence extends, 31 Geo. 2. c. 32.

SERVANTS IN GENERAL.

provision is made for adjusting disputes that arise between the masters and their servants, either with regard to the payment of wages, or otherwise;—for preventing combinations among servants to control their employers, or among the masters to prejudice their workmen;—for preventing artificers from leaving service before the time for which they engaged has expired; —leaving their work unfinished, or improperly disposing of goods entrusted to them;—and for other beneficial purposes. Some of the statutes upon this subject affect *all labourers*, whilst others apply only to *particular trades*. During the course of the observations which we shall have occasion to make in this place, it will be seen, that whilst the greater part of the penal enactments is necessarily applied to the enforcement of the duties of the workman or artificer, the care of the legislature has not been wanting to ensure to him the payment of his wages, as well as the performance of the other reciprocal obligations on the part of his master. Indeed whoever considers the numerous provisions in our law with reference to apprentices (1) and servants, and the inferior orders of society in general, must be satisfied that, whatever observations may be made upon this part of our code, the legislature cannot be justly charged with any want of anxiety to ameliorate the condition, or to administer to the necessities, of the labouring classes. One of the proposals of the celebrated Dean Tucker, in his Essay on Trade, was to erect courts in all manufacturing places in the kingdom where the chief dealers should petition for them, with the title of guardians of the morals of the manufacturing poor (2). He observed, that the complaints against the morals of the manufacturing poor became louder every day, and certainly demanded, if any thing did, the serious attention of the legislature; that among the just subjects of complaint were the combinations of journeymen to extort exorbitant wages, the money,—after it had been earned, being spent in drunkenness and debauchery, so that they became, in fact, poorer at the end of a week from the advanced price of their labour,—their unfaithfulness to their trust,—the badness of their work, whenever their masters had a great demand, and dared not turn them off,—and the increasing number of paupers.

(1) Vide as to apprentices and servants, 54 Geo. 3. c. 96. 28 Geo. 3. c. 38.; and as to employing children in mills, 42 Geo. 3. c. 73. &c. ante; and as to saving banks and friendly societies, 57 Geo. 3. c. 130. 58 Geo. 3. c. 48.

(2) Essay on Trade, 54. The qualifications of each member to be, that he employs not less than twenty manufacturers, &c.; each member to subscribe a yearly sum; to have power of fixing the number of licensed alehouses, &c.

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Numerous provisions have been made both before and since the time of this most respectable writer, to effectuate the objects which he so benevolently engaged in; namely, to repress vice, idleness, and debauchery, and to encourage industry, probity, and fidelity, in the lower classes of people; and as it is more within our province to notice the existing regulations, together with any improvements that may suggest themselves upon them, than to speculate upon the propriety of different theories, we shall proceed to mention those laws. After noticing those provisions which affect labourers *in general*, we shall detail, in alphabetical order, those which relate to particular trades.

The law relative to artificers and labourers in general. Settling disputes.

By the statute 20 Geo. 2. c. 19. it is provided, that all complaints and differences arising between masters and artificers, handicraftsmen, miners, colliers, heelmen, pitmen, glassmen, potters, and other labourers, employed for a certain time, or in any other manner (1), shall be determined by one or more justice of the peace of the place where a master inhabits, though no rate or assessment of wages has been made that year (2); the justices may examine such labourers, or any other witnesses, on oath, and make order for payment of wages as seems expedient, provided the sum is not above £10, as to a servant, nor £5 to an artificer, or other labourer; and on non-payment in 21 days, levy the sum by distress and sale (3). The statute extends to labourers of all descriptions, not merely to those in the particular trades or businesses there enumerated, and consequently includes the enforcement of wages earned by a labourer, who contracted to dig and clear a well for cattle, to be paid for by the foot, and who employed another to assist him in the work. The party appealing to the sessions is not thereby precluded from afterwards disputing its jurisdiction in the particular case; but an action of trespass is not maintainable against magistrates acting upon a complaint made to them on oath, by the terms of which they have jurisdiction, although the real facts of the case might not have supported such complaint, if such facts were not laid before them at the time by the party complained against having notice

(1) Hart v. Aldridge, Cowp. 54.; and see 31 Geo. 2. c. 11. s. 3. as to servants in husbandry.

(2) Rating wages was authorized by 5 Eliz. c. 4. 1 Jac. 1. c. 6. which is now repealed, together with the Scotch acts 22 Parl. Ja. 1. and 1 Parl. Car. 2. by the 53 Geo. 3. c. 40.; as to the silk trade in London, &c. see 13 Geo. 3. c. 68. post; and also as to tailors, &c.

(3) 20 Geo. 2. c. 19.

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of the complaint, and being properly summoned to attend (1): And where a justice of the peace makes an order under this act for payment of a labourer's wages, and the adjudication states a complaint made on oath, and on examination on oath, it is not competent to the plaintiff in an action of replevin for taking his goods to plead, in bar to a cognizance made under a warrant of distress and sale founded on that adjudication, that the servant did not duly make oath before the magistrate, that the sum claimed was justly due to him for wages, nor can he plead that the sum claimed was not due; and if it appear from the cognizance that 21 days elapsed between the time of adjudication and that of issuing the warrant, it is sufficient, without a positive averment to that effect, and although the dates are laid under a *scilicet:* an action of replevin does not seem to be the proper remedy to try the legality of a distress so authorized by act of parliament (2). By a statute passed in the reign of his present majesty, after reciting that by the statute 20 Geo. 2. it was enacted, that all complaints, differences, and disputes, which should arise between masters and mistresses, and artificers and labourers hired for a year or longer, respecting wages, should be determined by one or more justice or justices of the peace; and in case of non-payment of the sum ordered by the space of 21 days, the same might be levied by distress and sale; and that by the statute 31 Geo. 2. c. 11., the provisions of the 20 Geo. 2. were extended to all servants in husbandry, although hired for a less period than a year; and that it was expedient that the justices before whom complaint should be made should be empowered to order payment of the wages due within a shorter period, it is provided, that justices before whom complaint shall be made in pursuance of the said acts, or either of them, may order the amount of wages that shall appear due to any such artificers or labourers to be paid to the person entitled thereto, within such period as the justices shall think fit (3). So, with regard to the misconduct of servants, or the general misbehaviour of their masters towards them, one or more justices are empowered by the statute 20 Geo. 2., on complaint made on oath by any master or employer (4), to examine the matter, and commit the offender

(1) Lowther v. Earl Radnor, 8 East, 113.

(2) Wilson v. Weller, 1 Brod. & Bing. 57.

(3) 1 Geo. 4. c. 93. s. 4.

(4) See Rex v. Horenson, 14 East, 605, where the owner of the farm (who in that case was defendant, he having himself acted as justice) was held to be the employer, and not his bailiff who managed the farm.

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to the house of correction, there to remain and be corrected (1), and held to hard labour, for a reasonable time not exceeding one calendar month, or otherwise by abating some part of his wages, or discharging him from service; and in like manner, on complaint on oath by any such servant or other labourer against his master or employer, concerning mis-usage, refusal of necessary provision, cruelty, or other ill-treatment, to summon the master or employer, and upon proof made on oath to discharge the complainant from service, the discharge to be given gratis under the magistrate's hand and seal (2). It has been observed, that it has been a frequent practice under this statute for justices to assume a power of discharging servants, and superadding to that punishment one of the other two, *viz.* abatement of wages or imprisonment; but the act, which is framed in the disjunctive, does not seem to give this power, but rather to confine the magistrates authority to the awarding of one of the enumerated species of punishment (3). Some useful provisions have been made by a recent statute to prevent injurious combinations among workmen against their masters, or, on the other hand, among the masters themselves, and to compel the settlement of disputes through the medium of arbitrators. By the statute 39 & 40 Geo. 3. c. 106. the statute 39 Geo. 3. c. 81., for preventing *unlawful combinations* of workmen, is repealed; and it is enacted, that all agreements, whether in writing or not, entered into by journeymen, manufacturers, or other persons, for obtaining an advance of wages, or lessening or altering their usual hours or time of working, or decreasing the quantity of work (except a contract made between a master and his workmen on account of his work or service), or for hindering any person from employing whomsoever he may think proper, or for controuling or any way affecting a person carrying on any manufacture, trade, or business, in the conduct or management thereof, shall be illegal, and null and void, to all intents and purposes (4). No journeyman, workman, or other person, shall make or enter, or be concerned in making or entering, into any such agreement; and every person being guilty of any of the said offences, and being convicted, on confession, or oath of one

Combinations.

Contracts between servants to advance wages, &c.

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(1) Which means corporal punishment by whipping, 14 East, 605.

(2) 29 Geo. 2. c. 19. s. 2. Appeal to sessions under this act but no certiorari; nor does it extend to the stannaries, s. 5, 6, 7.

(3) Dickens. J. 2 vol. 838.

(4) 39 & 40 Geo. 3. c. 106.

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witness, before two justices, within three calendar months, shall be committed to gaol for a time not exceeding three months, or, at the discretion of the justices, be committed to some house of correction to hard labour for not more than two months. A summary form of conviction is given by the act by which this offence is created, in which the crime is required to be substantially stated; and it has been held, that a conviction, alleging generally that the defendants were concerned in entering into a certain agreement, for the purpose of controuling A, B, &c., without stating what the agreement was (even if a departure from the words of the statute, in stating the agreement to have been for the purpose of controuling, instead of for controuling, &c., would not, at all events, have been a fatal variance), was holden insufficient (1). Every journeyman, or workman, or other person, who shall enter into a combination to obtain an advance of wages, or to lessen or alter the hours or duration of the time of working, or to decrease the quantity of work, or for any other purpose contrary to the act, or who shall by giving money, or by persuasion, solicitation, or intimidation, or any other means, wilfully and maliciously endeavour to prevent any unhired or unemployed workman in any manufacture, trade, or business, or any other person wanting employment from hiring himself to any manufacturer or tradesman, or who shall, for the purpose of obtaining any advance of wages, or for any other purpose contrary to the provisions of the act, wilfully and maliciously decoy, persuade, solicit, intimidate, influence, or prevail, or attempt to prevail on any journeyman or workman, or other person hired or employed in any such manufacture, trade, or business, to leave the same, or who shall wilfully and maliciously prevent any manufacturer, tradesman, or other person, from employing any such manufacturer as he shall think proper, or who being hired or employed shall, without any just or reasonable cause, refuse to work with any other journeyman or workman, and who shall be convicted of any of the aforesaid offences, on confession or the oath of one witness before two justices, within three calendar months, shall be committed to gaol for a time not exceeding three months, or otherwise to some house of correction to hard labour for a time not exceeding two months (2). Every person (whether employed in any

Illegal meetings.

(1) The King *v.* Field and others, 6 East, 417.

(2) 39 & 40 Geo. 3. c. 106. s. 3.

such manufacture or not), who shall attend any meeting held for the purpose of entering into any contract, covenant, or agreement, declared by the statute to be illegal, or who shall summon, give notice to, call upon, persuade, entice, solicit, or by intimidation, or any other means *endeavour to induce* any journeyman, workman, or other person employed in any manufacture, trade, or business to attend any such meeting, or who shall collect, ask, or receive any money from any such workman or other persons for any of the purposes aforesaid, or who shall persuade, entice, solicit, or by intimidation, or any other means endeavour to induce any such person to enter into or be concerned in such a combination, or shall pay any money or enter into any subscription or contribution for the support or encouragement of any such illegal meeting or combination, and who shall be convicted on confession or the oath of one witness before two justices, within three calendar months, shall be committed to gaol for not more than three calendar months, or to the house of correction to hard labour for not more than two calendar months. So, penalties are recoverable for contributing to maintain workmen in such illegal acts, or inducing them not to work, or receiving money for such purposes (1). The 39 & 40 Geo. 3. did not empower any person carrying on trade to employ a workman therein contrary to the regulations contained in any statute then in force, for carrying on any particular manufacture or trade, or the service of the persons employed therein, without the license and consent in writing of one justice, expressing the reason of granting it, which licence a justice is required to grant when any qualified workman, usually employed in such trade, shall refuse to work therein for reasonable wages, or to work for any particular person, or by refusing to work for any other cause, for misconducting himself when employed to work, shall in any manner impede or obstruct the ordinary course of trade, or endeavour to injure the person carrying it on. All contracts between masters or persons for reducing the wages of workmen, or altering the usual hours of work, or increasing

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Contracts between masters, etc. to reduce wages, etc.

(1) 39 & 40 Geo. 3. c. 106. s. 5. Money paid for subscriptions forfeited, one half to the king and one half to informer, s. 6.; persons compellable to answer on oath to information in any of his Majesty's courts, s. 7.; indemnity on paying into court money in his hands and discovering another offender, s. 8.; offender compellable to give evidence, s. 9.; justices to summon offenders and determine disputes, s. 10.; not to abridge powers of former acts as to combinations, &c. s. 14.

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the quantity of work are void; and every master, being convicted by the oath of one witness before two justices, within three calendar months, is liable to forfeit £20, half to the king, and the other half, in equal shares, to the informer and the poor; for want of distress, the offender to be sent to gaol for not more than three, nor less than two, months (1). A cheap and summary method is established for settling disputes respecting wages and work by arbitration, by a provision, that where masters or workmen cannot agree respecting the price of work, or any damage done to it by workmen, or any delay in workmen in finishing work, or not finishing it in a workmanlike manner, or according to the contract, or touching any contract for work or wages, any such master or workman may demand and have an arbitration or reference of the matter in dispute, and each of them may appoint an arbitrator by writing, subscribed by him in the presence of, and attested by one, witness, which shall be delivered personally to the other party, or left at his usual place of abode, requiring him to name an arbitrator on his part within two days; and such arbitrators having accepted the office, may summon and examine on oath the parties and their witnesses, and proceed to hear and determine the complaint, and their award shall be final and conclusive; but in case they shall not agree, and not make and sign their award within three days after signing the submission, either party may require the arbitrators without delay to go before a justice and state to him the points in difference between them, who shall examine the parties and their witnesses upon oath, if he think fit, and hear and finally determine the same, which determination shall be made and signed within three days after the time allowed to the arbitrators: a warrant may be issued for any of the parties or witnesses neglecting to appear on summons, and they shall be committed to the house of correction without bail until they submit to be examined, or the time for making the award is expired. (2)

Disputes settled by arbitration.

Absenting from service.

The statute 6 Geo. 3. c. 25., to prevent artificers from leaving their services before their contracts are fulfilled, enacts, that if

(1) 39 & 40 Geo. 3. c. 106. s. 17.

(2) 39 & 40 Geo. 3. c. 106. s. 18.; time for making the award may be extended, s. 19.; no stamp necessary, s. 20.; duplicates to be made of it, s. 21.; either party refusing to name an arbitrator, or to abide by the award, forfeits £10, s. 22.; an appeal lies to the sessions, s. 23.; a conviction within three months, &c. s. 25.

any artificer, calico-printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, shall absent himself from service before the term of his contract is completed, or be guilty of any other misdemeanour, any justice of the peace for the place where the offender is found, may, on complaint upon oath being made to him by the principal, or his steward or agent, issue his warrant; and if the offender be found guilty, commit him to the house of correction for the place where the justice resides, for not more than three months, nor less than one month (1). A commitment in execution, by a magistrate, must state that the party has been convicted; setting forth that he was charged on oath with the offence, is not sufficient (2). The act does not seem to authorize corporal punishment by whipping as part of the sentence, although that is made an addition by the statute 20 Geo. 2. c. 19. as to offences within that act (3). If any person think himself aggrieved by the determination, order, or warrant of a justice of the peace under the act, except in the case of an order of commitment, he may appeal to the next general quarter sessions of the peace, after six months' notice given to the justice and to the parties concerned, and a recognizance entered into within three days afterwards, with sufficient surety (4). It has been decided, that no appeal lies to the sessions against a conviction and commitment, in execution, of a collier for three months under this statute, the clause of appeal expressly excepting an order of commitment, and the order of commitment in question containing a conviction of the collier for an offence within the act. (5)

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Wages in money or bank notes.

Some recent provisions have been made with regard to the payment of the wages of workmen, which it is advisable to notice in this place, on account of their very general application. Till lately, the wages of artificers employed in the principal manufactures could be paid in money only; but these regulations are altered by the statutes 58 Geo. 3. c. 51. and 1 Geo. 4. c. 93. The statute 58 Geo. 3. c. 51., after reciting that, by the several statutes 4 Edw. 4. c. 1. (6), 1 Ann. st. 2. c. 18., 10 Ann. c. 16. (7), 1 Geo. 1. c. 15. (7), 7 Ann. c. 13. (7), 12 Geo. 1. c. 34.,

(1) 6 Geo. 3. c. 25. s. 4.

(2) Rex v. Cooper, 6 Term Rep. 509. Rex v. Rhodes, 4 Term Rep. 220.

(3) Rex v. Horenson, 14 East, 605.

(4) 6 Geo. 3. c. 25. s. 5. N. B. This act does not extend to the stannaries, s. 6.

(5) The King v. The Justices of Staffordshire, 12 East, 572.

(6) See these several statutes, post.

(7) Repealed by stat. 49 Geo. 3. c. 100.

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13 Geo. 1. c. 23., 13 Geo. 2. c. 8., 22 Geo. 2. c. 27., 29 Geo. 2. c. 33., 13 (quære 17) Geo. 3. c. 56. (1), 57 Geo. 3. c. 115., and 57 Geo. 3. c. 122., the payment of the wages of workmen, in certain trades and occupations, in the aforesaid acts enumerated, in any other way than in the lawful coin or money of this realm, is prohibited and made penal; and that it would be expedient that persons concerned in the trades or occupations, or concerned in the employment of artificers, workmen, or labourers of the descriptions mentioned in the aforesaid acts, should be permitted, in all cases where such artificers, workmen, or labourers shall be willing to receive the same in payment, to satisfy and pay the wages of such artificers, workmen, or labourers, in notes of the governor and company of the bank of England, or in notes of any duly licensed banker or bankers, issued under the authority and according to the provisions of the acts for the time being, for granting and regulating the stamp-duties, and other the act or acts for the time being for that purpose made and provided,—enacts, that it shall be lawful for all and every person or persons concerned in the trades or occupations, or concerned in the employment of artificers, workmen, or labourers, of the descriptions mentioned in the aforesaid acts or any of them, to pay the wages of their, his, or her workman or workmen, labourer or labourers, artificer or artificers, in a note or notes of the governor and company of the bank of England, or in a note or notes of any duly licensed banker or bankers, issued under the authority of the statutes for the time being, in that behalf made and provided, and according to the provisions of the statutes, for the time being, for granting and regulating the stamp-duties, in all cases where his, her, or their labourer or labourers shall freely and voluntarily consent and be willing to accept and receive the same in payment or satisfaction of his, her, or their wages, but not otherwise (2). And the same statute, after reciting that, by the said act or some of them, it is provided, that the forfeitures and penalties thereby imposed on persons concerned in the trades and occupations, or concerned in the employment of artificers, workmen, and labourers of the description therein mentioned, who shall pay the wages of the said artificers, workmen, or labourers, or any part thereof, otherwise than in the lawful coin or money of this realm, contrary to the provisions of the said acts, shall be paid in some cases to the

(1) The 19 Geo. 3. c. 49. as to dealers in lace does not seem to be included, see post.

(2) 58 Geo. 3. c. 51. s. 1.

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artificers, workmen, and labourers, and in other cases one moiety to the informer, and the other moiety to the party or parties grieved; and that it would tend to the more easy conviction of offenders if the said penalties and forfeitures were in future in all cases to be paid, one moiety to the informer and the other moiety to the use of the poor of the parish in which the offence is committed; it is therefore enacted, that so much of the said acts or any of them, as directs the payment of the said forfeitures and penalties either to the labourers, artificers, or workmen themselves, or in equal moieties to the informer and to the party or parties aggrieved is repealed (1). And if any person shall incur and be convicted in any penalty under any of the said acts, the penalty in which any such person shall be so convicted, instead of being applied as by the said acts or any of them is directed, shall be paid, one moiety to the informer, and the other moiety to the churchwardens and overseers of the poor, or in Scotland to the kirk session of the parish within which the said offence shall have been committed, for the use of the poor of the said parish (2). But if the informer be called upon to give evidence, the *whole* of the penalty is in that case to go to the poor of the parish (3). The brief form of conviction, which is given by the 58 Geo. 3., is to be deemed and taken to be the legal and proper form of conviction, as to any penalty or penalties to be incurred under any or either of the aforesaid acts (4). All the powers, provisions, regulations, pains, penalties, and forfeitures in the said acts, or any of them contained for the purposes aforesaid, shall be exercised, enforced, levied, recovered, and applied in as ample and full a manner as if they had been by this act enacted (5). The stat. 58 Geo. 3. is amended by the 1 Geo. 4. c. 93., which enforces the necessity of paying workmen's wages, without laying them under restrictions as to their modes of expending them. By the statute 1 Geo. 4. (intituled "an act to amend and render more effectual the provisions of divers acts for securing to certain artificers, workmen, and labourers in such acts mentioned, the due payment of their wages,") after reciting, that by statutes 4 Edw. 4. c. 1., 1 An. st. 2. c. 18., 12 G. 1. c. 34., 13 G. 1. c. 23., 13 G. 2. c. 8., 22 G. 2. c. 27., 29 G. 2. c. 33., 17 G. 3. c. 56., 57 G. 3. c. 115., and 57 G. 3. c. 122., the payment of the wages of workmen in certain trades and occupa-

(1) 58 Geo. 3. c. 51. s. 2.
(2) Id. s. 3.
(3) Id. s. 4.
(4) Id. s. 5.
(5) Id. s. 6.

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tions in the aforesaid acts, enumerated in any other way than in the lawful coin or money of this realm, is prohibited and made penal; and that by stat. 58 G. 3. c. 51., it was made lawful for all persons concerned in the trades or occupations, or concerned in the employment of artificers, workmen, or labourers of the descriptions mentioned in the aforesaid acts or any of them, to pay the wages of their workmen, labourers, or artificers, in a note or notes of the governor and company of the bank of England, or in a note or notes of any duly licensed banker or bankers, issued under the authority of the statutes for the time being, in that behalf made and provided, and according to the provisions of the statutes for the time being, for granting and regulating the stamp duties in all cases where their labourers, workmen, or artificers should be willing to accept and receive the same in payment of their wages, but not otherwise; and whereas the protection intended to be afforded to artificers, workmen, and labourers of the description in the said acts mentioned, by requiring the payment of their wages in money or bank notes, is not effectually given by the provisions in the said acts mentioned, it is enacted, that if any person concerned in the employment of artificers, workmen, or labourers, of the descriptions mentioned in the aforesaid acts or any of them, shall, after the passing of the act, at any time make or impose, or cause to be made or imposed, any restriction, stipulation, or agreement, either directly or indirectly, as to the place or manner of expending or laying out the whole or any part of any wages, money, or bank notes, agreed to be paid to any artificer, workman, or labourer, of the description mentioned in the aforesaid acts or any of them, or as to the person or persons with whom the same or any part of such wages, money, or bark-notes shall be expended or laid out, or shall in any way do any thing contrary to or in violation of any of the provisions of the aforesaid acts or any of them, so far as respects the payment or receipt of wages; every person so offending, and being thereof lawfully convicted, shall forfeit and pay, in lieu of any penalty or penalties imposed by the said recited acts or any of them, any sum not less than £10, nor more than £20, in the discretion of the justice or justices before whom any such offenders shall be convicted, together with the full costs and charges attending such conviction; and which costs and charges such justice or justices is and are hereby empowered to ascertain

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and settle; any thing contained in any act or acts of parliament to the contrary thereof in anywise notwithstanding (1). All the powers, provisions, and regulations in the said acts before-mentioned, or any of them, contained, for the levying, imposing, or recovering any penalty or forfeiture thereby imposed, shall and may be exercised and applied for the levying, enforcing, or recovering any forfeiture or penalty by this act imposed, in as ample and full a manner as if the same had been hereby enacted; and all and every penalties and penalty, when recovered, shall be applied and disposed of in such manner as forfeitures and penalties under the said recited acts or any of them, are, by the said act passed in the 58 Geo. 3., directed to be paid and applied (2). It is also enacted, that from and after the passing of this act, it shall be lawful for any court of quarter sessions, to which any appeal may be made, in pursuance of any provisions contained in the aforesaid acts or any of them, or of this act, respecting the payment or receipt of wages, to award treble costs, to be paid by the appellant or appellants, in any case where the cause of such appeal shall be by such court of quarter sessions determined against any such appellant or appellants, and to enforce the payment of such treble costs, in like manner as such court may be authorised to enforce the payment of common costs awarded by such court in ordinary cases (3).

Saving banks.

To encourage a provident disposition in the labouring classes of the community, some recent statutes have been passed of the 57 Geo. 3. c. 130., the 58th of the same reign, c. 48., and the 1 Geo. 4. c. 83., to establish and regulate the institutions called the *saving banks*, which are likely to be productive of considerable advantage. The 57 Geo. 3. enacts, that if any number of persons who have formed or shall form a society in any part of England for the purpose of establishing and maintaining any institution in the nature of a bank, to receive deposits of money for the benefit of the persons depositing it, and to accumulate the produce of so much thereof as shall not be required by the depositors, their executors or administrators, to be paid in the nature of compound interest, and to return the whole or any part of such deposit and the produce of it to the depositors, their executors or administrators, deducting only out of such produce so much as should be required to be so

(1) 1 Geo. 4. c. 93. s. 1.
(2) Id. s. 2.
(3) Id. s. 3.

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retained for the purpose of paying and discharging the necessary expences attending the management of such institution, according to rules, orders, and regulations established for that purpose, but deriving no benefit whatsoever from any such deposit or the produce thereof, shall be desirous of having the benefit of the provisions of the act, such persons shall cause the rules, orders, and regulations established for the management of such institution to be entered, deposited, and filed in manner therein directed, and thereupon shall be deemed entitled to the benefit of the provisions contained in the act. (1)

SERVANTS IN PARTICULAR. *Clockmakers* (2) *embezzling materials.*

Persons employed in the making of *clocks and watches* are governed by particular laws. By the 27 Geo. 2. c. 7. it is enacted, that if any person hired or employed by any one practising the trade of *clock-making* or watch-making, or any part or branch thereof, to make, finish, alter, repair, or clean, any clock, watch, or part thereof, or intrusted by any person practising the said trade or trades, with any gold, silver, or other metal or material, to be or that shall be in the whole or in part wrought or manufactured for any part of a clock or watch, or any diamond or other precious stone to be, or that shall be set or fixed in or about any clock or watch, shall purloin, embezzle, secrete, sell, pawn, exchange, or otherwise unlawfully dispose of any clock, watch, gold, silver, or other metal or material, or any part thereof, or any diamond or other precious stone, with which he shall be so intrusted, and shall be thereof convicted by the oath of the owner, or other credible witness, or by confession before one justice where the offence shall be committed, or the person so charged shall reside, he shall for the first offence forfeit £20; and if not forthwith paid, the justice shall commit him to the house of correction, or other public prison, there to be kept to hard labour for fourteen days, unless the forfeiture be sooner paid; and if within two days before the expiration of the fourteen days such forfeiture shall not be paid, the said justice may order him to be publicly whipped at the market place, or some other public place of the city, town, or place, where such offence shall be committed; and for a second or other subsequent offence, shall forfeit £40 in like manner; and if not paid forthwith, the justice shall commit him as aforesaid, there to be kept to hard labour

(1) Vide 57 Geo. 3. c. 130. 58 Geo. 3. c. 48.; altered by 1 Geo. 4. c. 83. as to debentures, &c.

(2) As to the mode of making clocks and watches for exportation, &c. ante, 1 vol. 577.

for any time not exceeding three months, nor less than one month, unless the forfeiture shall be sooner paid; and if within seven days before the expiration of the time for which he shall be committed, the forfeiture shall not be paid, the justice may order him to be publicly whipped in like manner twice, or oftener, as to such justice shall appear reasonable (1). And if any person shall buy, receive, accept, or take, by way of gift, pawn, pledge, sale, or exchange, or in any other manner of or from any person whomsoever, any clock or watch, or part thereof, or any gold, silver, or other metal or material as aforesaid, whether the same or any part thereof be or be not wrought or manufactured, or any such diamond or other precious stone, knowing the same to be so purloined or embezzled, he shall, on the like conviction, for the first offence forfeit £20, and if not forthwith paid, the justice shall commit him in like manner, there to be kept to hard labour for fourteen days, unless the forfeiture shall be sooner paid; and if within two days before the expiration of the said fourteen days, the said forfeiture shall not be paid, the justice shall order him to be publicly whipped as aforesaid, once or oftener, as to such justice shall appear reasonable and for a second or other subsequent offence, he shall forfeit £40, and if not forthwith paid, the justice shall commit him as aforesaid, to be kept to hard labour for any time not exceeding three months, nor less than one month, unless the forfeiture shall be sooner paid, and if within seven days before the expiration of the time for which he shall be committed, the forfeiture shall not be paid, the justice shall order such offender to be publicly whipped as aforesaid, twice or oftener, as to him shall appear reasonable (2). One justice, on complaint on oath of any offence against this act, may issue his warrant for apprehending and bringing before him, or before any other justice of the same place, the person so charged (3). A form of conviction is given by the act (4). If any person so convicted shall think himself aggrieved by the judgment of the justice, he may appeal to the next sessions, in which case the execution of the judgment shall be suspended, the person so convicted entering into recognizance at the time of the conviction, with two sureties, in double the sum adjudged, to prosecute the appeal with effect, and to be forthcoming to abide the judgment and determination of the justices in such sessions; and the justices then shall hear

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Receiving such goods.

Proceedings before the justice.

(1) 27 Geo. 2. c. 7. s. 1.
(2) Id. s. 2.
(3) Id. s. 5.
(4) Id. s. 4.

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and determine the same, and award such costs to either party as to them shall appear just and reasonable; and if the judgment be affirmed, the appellant shall immediately pay the sum adjudged, together with such costs as shall by the court be awarded, or in default thereof shall suffer the penalties as for purloining, embezzling, or receiving as aforesaid (1). The forfeitures, after satisfaction made thereout to the party injured, together with such costs of prosecution as the justice shall adjudge reasonable, shall go to the use of the poor where the offender shall reside (2). The conviction to be written on parchment, transmitted to the next sessions, and filed among the records there, and not to be removed by certiorari. (3)

Clothiers and weavers (4), etc.

The embezzlements committed by *clothiers* (that is to say, any sorter, corder, kember, spinster, and weaver) in the course of their service, are punishable before magistrates, who may compel them to make satisfaction in damages; and if any offender be not thought sufficient, or do not make satisfaction, he shall, for the first offence, be apprehended and whipped, or set in the stocks where the offence is committed, or in some market town near, in the same county; and for the second offence, shall incur the like or some further punishment by whipping, or being put in the stocks, as shall be thought convenient (5). And every spinner that shall receive any wool to be spun into yarn, for any clothier dwelling in Coggeshall, Bocking, Braintree, Halstead, Witham, or Colchester, and shall deliver back the yarn by any reel shorter than two yards about, shall be subject to the like punishment (6). It is also provided, that it shall not be lawful for any maker of mixed, medley, or white cloth, to use any bars called warping bars, except such as are of the measure and length thereby appointed; that is to say, every long warping of the length of three yards and three inches, and no more, every round warping bar four yards and four inches round, and no more; the said three inches on the long bar, and four inches on the round bar, being in lieu of the over-measure usually allowed on cloth; and also the thrums at the end of the warping-bar shall not exceed 18 inches in length, and if a maker of such cloth use any warping-bar of other length or measure, or with

(1) 27 Geo. 3. c. 7. s. 3.
(2) Id. s. 2.
(3) Id. s. 4.
(4) See also post.
(5) 7 Jac. 1. c. 7. s. 2.
(6) Id. s. 4.

thrums exceeding 13 inches in length, he shall forfeit £10 (1). Every maker of such cloth or goods mixed with wool, is required to give out all wool, yarn, or other materials, by weight, at 16 ozs. to the lb., and receive back the same by the same weight, on pain of £5 (2). Frauds committed by workmen in not returning tools, or wetting the yarn, or in other respects, are punishable by commitment to the house of correction; and search warrants may be issued for tools and materials embezzled (3). The wages of workmen are to be paid, not in goods, but in money (4), or notes of the bank of England or a licensed banker (5). All disputes relative to work, wages, or damages, may be determined before two justices. (6)

SERVANTS IN PARTICULAR.

Cotton weavers. (7)

Provision has been made for settling by arbitration disputes in the trade of cotton weaving, in all cases that may arise where the masters and workmen cannot agree respecting the price to be paid for work, when such dispute shall happen between them respecting the reduction or advance of wages, or any injury or damage done by the workmen to the work, or supposed delay in finishing it, or not finishing it in a good and workmanlike manner, and where the workmen are to be employed in working any new pattern, which shall require them to purchase new implements of manufacture for working it, and the masters and workmen cannot agree upon the compensation to be made to the workmen in respect thereof; and also respecting the length of pieces of cotton goods, or the wages to be paid for such goods, made of any great or extraordinary length, and respecting the manufacture of cravats, shawls, polycat, roncal, and other handkerchiefs, and the number to be contained in one piece, and the wages to be paid for it; and all disputes and differences arising in the trade, which cannot be mutually settled between them; any such master or workman may demand to have an arbitration or reference of the dispute, and each of them may nominate an arbitrator (8). By a later statute, however, so much of the 39 & 40 Geo. 3. as relates to the settlement of dis-

(1) 13 Geo. 1. c. 23. s. 1.
(2) Id. s. 2.
(3) 14 Geo. 3. c. 25.
(4) 1 Geo. 1. st. 2. c. 15.; 40s. penalty on conviction in forty days before a justice, 10 Ann. c. 16., £20 penalty by 29 Geo. 2. c. 33.; to be paid in two days after work performed, on 40s. penalty, 30 Geo. 2. c. 12.
(5) 58 Geo. 3. c. 51.
(6) 13 Geo. 3. c. 23. s. 5.
(7) See also as to cotton manufactures, post.
(8) 39 & 40 Geo. 3. c. 90.

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putes by arbitration, is repealed; and it is enacted, that in all cases where an arbitration may be demanded by that act, where the party complaining, and the party complained of, shall come before or agree by any writing under their hands, to abide by the determination of a magistrate, it shall be lawful for him, on complaint made, and proof, by the examination of the party making the complaint, that appeal has been made to him against whom the cause of complaint has arisen, or his agent, if the dispute has arisen with an agent, to settle the dispute, and that it has not been settled on complaint made, or where the dispute relates to a bad warp, such cause of complaint shall not be done away within forty-eight hours after the application to summon the party or agent, on some day not exceeding three days, exclusive of Sunday, before the making such complaint, giving notice to the person complaining of the time and place appointed in the summons for the attendance of such person or agent; and if at such time and place the person so summoned shall not appear by himself, or by some one on his behalf, to settle such dispute, or appearing, shall not do away such cause of complaint, the justice shall, at the request of either party, nominate arbitrators for settling the matter in dispute, and shall propose at such meeting not less than four, nor more than six persons, one-half of whom shall be master manufacturers or agents, or foremen of some master manufacturer, and the other half of whom shall be weavers in such manufacture, such respective persons residing in or near the place where the dispute has arisen, out of which master manufacturers, agents, or workmen, the master engaged in such dispute, or his agent, shall chuse one, and out of which weavers so proposed the weaver or his agent shall chuse another, who shall have full power to hear and determine the dispute; and the justice shall thereupon appoint a meeting according to the directions of the act, and also a day for the meeting, notice of which nomination and day of meeting shall thereupon be given to the arbitrators, and to any party to such dispute who may have attended before the justice(1). And the person so appointed shall hear and examine the parties and their witnesses, and determine such dispute within two days after nomination, exclusive of Sundays; and the determination of the arbitrators shall be final and conclusive (2).

(1) 44 Geo. 3. c. 87.

(2) Id. s. 2.; justice may appoint other persons if party nominated refuse to attend, s. 4.

SERVANTS IN PARTICULAR. Lace-makers' wages, etc. (1)

By the 19 Geo. 3. c. 49., all *lace merchants* and dealers in lace, and all other persons who shall employ any person in the making of bone or thread lace, or who shall buy any such of the maker thereof, shall pay such persons for their labour, and for all the lace so bought of them in money (2) only, and not with goods, or by way of truck, or in any other manner, either in the whole or in part, on pain of forfeiting £10 to the party grieved, by warrant of one justice, by distress; and for want of sufficient distress, to be committed to the common gaol, prison, or house of correction, for six calendar months, unless such penalty, and the charges attending the recovery thereof be sooner paid. And if any money shall be owing to any person employed in the making of any bone or thread lace, for his labour or for the purchase of any such lace, such person shall apply to a justice, and if, on the oath of the complainant, the money appears to the justice to be due and owing, the same may be recovered and levied in like manner as the aforesaid penalty (3). Persons aggrieved may appeal to any sessions to be holden within six calendar months after the cause of complaint shall arise, giving fourteen days' notice to the person in whose favour the act shall be done, and the sessions shall hear and finally determine the same, and may award costs to either party, and levy the same by distress. (4)

Leather. (5)

A person employed in the *leathern* manufactures embezzling materials, whether wrought or unwrought, or doing any act to lessen the value, may be compelled by conviction before a justice to make suitable satisfaction to the party injured, not exceeding double value, half to the party grieved, and half to the poor, in default of distress to be committed to the house of correction with hard labour for fourteen days and whipping; on a second conviction he is liable to forfeit four times the value, and if not paid to be committed for not more than three months nor less than one month (6) Knowingly to receive such goods or materials is punishable in like manner (7). Every person retained or employed for one master, and neglecting his duty by procuring

(1) 19 Geo. 3. c. 49. s. 1, 2. As to the importation of gold and silver lace, &c. ante, 1 vol. 528.; and as to selling or exporting foreign silk or thread lace, 1 vol. 576.

(2) See ante.

(3) 19 Geo. 3. c. 49. s. 3.

(4) Id. s. 4.

(5) See also post, under the head of wool.

(6) 13 Geo. 2. c. 8. s. 4.

(7) Id. s. 5.

SERVANTS IN PARTICULAR.

or permitting himself to be subsequently retained or employed by another master before he has completed the work he was employed to do, is liable, on conviction by the oath of one witness before a justice, to be sent to the house of correction, and there kept to hard labour for a term not exceeding one month (1). The wages of workmen are to be paid in money (2), or, with their consent, in bank of England or a banker's notes (3), but not in victuals or goods, except by their own request and consent; and all materials delivered out to be wrought, shall be accomplished, with a declaration of the true weight, quantity, or tale thereof, on pain of forfeiting to the manufacturer double the value of what shall be due for his work, and if such labourer be guilty of any fraud or abuse in the work undertaken to be done by him, he shall answer to the owner double damages (4). All wages, demands, frauds, abuses, neglects, and defaults of labourers, manufacturers, and workmen, concerning work done the manufacture, shall be determined by two justices, who may summon and examine witnesses on oath or affirmation (5). Persons aggrieved by such an order of two justices may appeal to the next sessions, giving eight days notice to the person against whom the appeal is brought. (6)

Paper-makers.

By the statute 36 Geo. 3. c. 111., all contracts, whether in writing or not, made or entered into by journeymen *paper-makers*, for obtaining an advance of wages, or lessening their usual hours or quantity of work, or for preventing any person from employing whomsoever he shall think fit, or in any way to affect any person in carrying on the said business, shall be null and void (7). And if any journeyman paper-maker, or other person, shall, after the passing of the act, enter into or be concerned in making any contract relative to any such combination, he shall, on conviction, on the oath of one witness, before a justice, on information in writing within one month, by order of such justice, be committed to the house of correction, to hard labour, for a time not exceeding two calendar months (8). The time of working, by journeymen, at the vat, upon all fine, wove, and plate papers, if the master shall so require, shall be half an hour about each part, twenty of which to make a day's work; and every dry worker upon all such fine papers, if required,

(1) 13 Geo. 2. c. 8. s 8.
(2) Id. s. 6.
(3) 58 Geo. 3. c. 51.
(4) 13 Geo. 2. c. 8. s. 6.
(5) Id. s. 7.
(6) Id. s. 9.
(7) 36 Geo. 3. c. 111. s. 1.
(8) Id. s. 2.

SERVANTS IN PARTICULAR.

shall work twelve hours per day, allowing one hour thereout for refreshment (1). And every journeyman paper-maker who shall enter into any combination to raise the wages, or to alter the hours or duration of work, or for any other purpose contrary to the act, or who shall, by giving money or other means, directly or indirectly, solicit, intimidate, or endeavour to prevent any combined journeyman or other person, wanting employment in the manufacturing of paper, from hiring; or shall decoy, solicit, influence, or prevail, or endeavour to prevail on any person hired or employed in the manufacture to quit his service, or shall proscribe, hinder, or prevent any master in such art or mystery from employing whomsoever he shall think proper, or, being retained or employed, shall refuse to work with any person whom such master shall think proper to employ, and shall be convicted thereof, on the oath of one witness, before a justice, shall be committed to the house of correction, to hard labour, for not more than two calendar months (2). Also, if any person, whether employed in the trade or not, shall attend any meeting or combination therein declared illegal, or shall summon, give notice to, or call upon any journeyman paper-maker or other person employed in the trade to attend thereat, or who shall collect, demand, ask, or receive any money from any such person for the above purposes, or shall persuade, entice, inveigle, or intimidate any such person to enter into or be concerned in any such meeting or combination, or to turn out against, or quit the service or employ of the paper-maker in whose service he is employed; or if any person shall pay any money, or make or enter into any subscription or contribution towards the support or encouragement of any such illegal meeting or combination, he shall, on conviction before one justice, on the oath of one witness, be committed to the common gaol or house of correction, without bail, for not more than two calendar months. (3)

Silk.—Rating wages in London or Westminster, etc.

It is provided by the statute 13 Geo. 3. c. 68., that the wages of journeymen weavers, in the manufacture of *silk*, or of silk mixed with other materials, in London or Middlesex, or the city and liberty of Westminster, or the Tower, shall be settled by the lord mayor and justices, at the general quarter sessions, according to their jurisdictions; and the magistrates are obliged,

(1) 36 Geo. 3. c. 111. s. 3.

(2) Id. s. 4.

(3) Id. s. 5.; offender compelled to give evidence, and indemnification thereby, s. 6.; summoning offenders, s. 7.; form of conviction and appeal to next session on giving surety, s. 8. 10.

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within fourteen days after, at the reasonable expence of any person applying for them, to publish the rates three times in any two daily newspapers in London or Westminster (1). And if any master weaver give more or less wages, or pay larger or less prices to any of the journeymen weavers than shall be so settled, he shall, on conviction before two justices, upon the oath of one witness, forfeit £50, to be levied by distress, to be paid to the master of the weavers' company, first deducting the expence of such prosecution, for the use of distressed journeymen weavers, or their families, who shall have been last employed in either of the said jurisdictions, at their discretion. A forfeiture of a penalty not exceeding 40s. is also incurred by every journeyman, within the aforesaid districts, who shall ask, receive, or take more or less than so rated, or enter into any combination to raise the wages or prices of work, or for that purpose shall decoy, solicit, or intimidate any journeyman weaver within these districts, so that he leave the master for whom he is employed, or shall assemble themselves in a number exceeding ten, in order to frame or deliver petitions or other representations touching their wages or prices of work, except to the justices, &c. at their quarter sessions (2). And if any master weaver, residing within the limits, retain or employ a journeyman living out of the limits, with intent to evade the act, he shall forfeit £50, half to the king and half to the informer (3). The statute 13 Geo. 3. does not extend to fix the wages of a person employed in the business as foreman (4). But its provisions have been since extended to journeywomen as well as journeymen (5). By the 13 & 14 Car. 2. c. 15., every *silk* winder and doubler, who shall unjustly, or deceitfully and falsely purloin, *embezzle*, pawn, sell, or detain any part of silk delivered to them to wind or double, in every such case as well the winder or journeyman so offending, as the buyer and receiver thereof, being lawfully convicted, by confession or oath of one witness, before one justice, of the county or liberty (or if within any city or town corporate, before the mayor chief officer), shall render to the party grieved such satisfaction for his damage and loss and charges as the justice, &c. shall order (6). But no more damages shall be given than the party grieved shall prove he is damnified, and hath expended in looking after the same; and if the party shall

Asking more wages, and combinations, etc.

(1) 13 Geo. 3. c. 68. s. 1.; rating wages in general, now abolished, 53 Geo. 3. c. 40.

(2) 13 Geo. 3. c. 68. s. 3.

(3) Id. s. 5.

(4) Id. s. 6.

(5) 51 Geo. 3. c. 7.

(6) 13 & 14 C. 2. c. 15. s. 6.

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not be able or do not make recompence in fourteen days after conviction, in such manner and form as by the said justice, &c. shall be ordered and appointed, he shall for the first offence be apprehended and whipped, or set in the stocks, where the offence was committed; and for the second offence, to incur the like or such further punishment by whipping, or being put in the stocks, as such justice, &c. shall think convenient (1). By another statute it is provided, that if any silk-winder or doubler be found faulty in unjustly, deceitfully, or falsely purloining, embezzling, pawning, selling, or detaining any silk committed to his trust, any justice, mayor, or chief officer of any county, liberty, or corporation, shall immediately, on conviction by confession or oath of one witness, commit him to prison, or to the house of correction, till satisfaction be given to the party wronged, or punishment inflicted as by the 13 & 14 Car. 2. c. 15. is appointed (2). And any person who shall embezzle, pawn, sell, or detain any silk delivered to him to be worked up, or after it is wrought up, and also the receiver, buyer, or such as take the same to pawn, shall be subject to all the penalties of the 13 & 14 Car. 2. c. 15., and the 20 Car. 2. c. 6. (3). Also, if any person shall buy, receive, accept, or take by way of gift, pawn, pledge, sale, or exchange, or in any other manner whatsoever, of or from any person hired or employed to prepare or work up the silk manufacture, or silk mixed with other materials, any silk, whether the same be or be not first wrought, made up, or manufactured, and whether the same be or be not mixed with other materials, knowing such person to be so employed as aforesaid, and not having first obtained the consent of the person so hiring or employing him; or whether any silk shall have been purloined or embezzled by any person, shall buy, receive, accept, or take, in any manner whatsoever, from any such person any such silk, whether wrought or unwrought, mixed or unmixed, knowing the same to have been purloined or embezzled, the person so buying, receiving, accepting, or taking any such silk, may be proceeded against as directed by 22 G. 2. c. 27., and 17 G. 3. c. 56., or may be prosecuted for a misdemeanour, and shall be punished by fine, imprisonment, or whipping, as the sessions, who are empowered to try such offenders, or other court where tried, may think fit, although

(1) 13 & 14 Car. 2. c. 15.
(2) 20 Car. 2. c. 6. s. 3.
(3) 8 & 9 W. c. 36. s. 6.

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no proof upon such trial be given to whom such silk doth belong (1). And if any person shall sell, pawn, pledge, exchange, or otherwise unlawfully dispose of, any silk, wrought or unwrought, mixed or unmixed, knowing the same to have been so purloined or embezzled, he shall be liable to the same punishment as persons convicted of receiving purloined or embezzled silk would be liable to by virtue of the 32 Geo. 3. c. 44. s. 4. (2)

*Shoemakers.* Pawning, etc. Goods.

The statute 9 Geo. 1. c. 27. declares, that if any journeyman *shoemaker*, or person hired or employed as such, within the bills of mortality, shall be accused by his master of purloining, embezzling, selling, pawning, or exchanging any boots, shoes, slippers, cut leather, or other materials for making the same, or other wares or materials, one justice where the offence shall be committed, or the offender shall inhabit, on oath of such offence, may summon the party, or issue his warrant to apprehend him; and if the same is proved before him by confession, or oath of one witness, he shall convict the offender, and award satisfaction for damages and charges, and levy the same by distress, and for want of sufficient distress, shall cause the offender to be whipped where the offence was committed, and in case of a conviction for a second or other offence, he shall commit him to the house of correction, there to remain and be kept to hard labour not exceeding one month, nor less than 14 days (3).

Receiving them.

Every person who shall buy, *receive*, or take in pawn of such person as aforesaid the same, shall for every such offence, on conviction as aforesaid, make such recompence within two days as shall be awarded, or be subject to distress, and for want of sufficient distress, be liable to the like punishment as aforesaid (4). Two justices within the limits aforesaid, on complaint on oath, may issue their warrant for searching in the day-time for goods so purloined, and break open doors, and every person hindering such search shall forfeit £10 to him who shall sue in two calendar months, to be recovered by action, and if such goods shall be found, the justices shall restore them to the owner, and cause the offender to make satisfaction for the loss and damages in detaining and charges in getting the same, and upon refusal the party shall suffer as in cases of purloining (5). Every per-

(1) 32 Geo. 3. c. 44. s. 4.
(2) Id. s. 5.
(3) 9 Geo. 1. c. 27. s. 1.
(4) Id. s. 2.
(5) s. 3.

son retained by one master, who shall neglect the performance of his work by suffering himself to be detained or employed by any other before he has finished his work, shall, on conviction on oath of one witness before one justice, be sent to the house of correction, there to be kept to hard labour not exceeding one month (1); and persons aggrieved may appeal to the next sessions, upon giving eight days notice. (2)

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*Taylors.* Combinations to raise wages (a), etc.

By the 7 Geo. 1. st. 1. c. 13. all contracts or agreements by or between taylors or journeymen *taylors*, within the weekly bills of mortality, for advancing their wages, or lessening their usual hours of work, are illegal, and shall be void: and such persons keeping up, continuing, acting in, making, entering into, signing, sealing, or knowingly interested or concerned in any such contract or agreement, shall, on conviction in three months on oath of one witness before two justices, be, at their discretion, committed either to the house of correction, there to remain and to be kept to hard labour for any time not exceeding two months, or to the common gaol, as they shall see cause, for two months (3). The sessions from time to time shall, upon application, appoint the wages and hours of work which all taylors and their workmen shall observe, on pain of imprisonment by such justices for any time not exceeding two months, on prosecution in six days (4). If any journeyman taylor, or servant in the art of a taylor, shall depart from his service before the end of his term, or before his work for which he was hired be finished, or not being retained or employed shall refuse to enter into work, unless for cause, to be allowed by two justices, he shall be sent to the house of correction, there to be kept to hard labour for any time not exceeding two months (5). Taylors allowing or paying greater wages for the hours of work appointed by this act, than so limited, shall forfeit £5, on conviction in three months, half to the informer, and half to the poor; and servants or journeymen taking greater wages shall be sent to the house of correction, there to be kept to hard labour for any time not exceeding two months (6). Persons aggrieved by any order of two justices as aforesaid, may appeal to the next sessions, giving six days notice; the sessions may award costs to either party,

(1) 9 Geo. 1. c. 27. s. 4.
(2) s. 5.
(3) 7 Geo. 1. st. 1. c. 13. s. 1.
N.B. This statute applies only within the bills of mortality.
(4) Id. s. 2.
(5) Id. s. 6.
(6) Id. s. 7.

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and their decision to be final (1). By the 8 Geo. 3. c. 17., which was passed in order to explain and amend the previous statute, it is enacted, that the hours of work for servants or journeymen to be employed in the taylor business, within London and five miles thereof, shall be from six in the morning till seven in the evening, with an interval of one hour only for refreshment, and the wages for the same shall be any sum not exceeding 2s. 7½d. a day, except during the space of one calendar month from the publication of any order for a general mourning, by the earl marshal, in the London Gazette, and during that space, any sum not exceeding 5s. 1½d. (2). And if any master taylor shall directly or indirectly give, allow, or pay, in money or otherwise, any more or greater wages than the wages aforesaid, or such other wages as shall from time to time be appointed by virtue of this act; or if any workman within the said limits shall directly or indirectly take, in money or otherwise, any more or greater wages than as aforesaid, he shall, on information or prosecution within three months, and conviction thereof before two justices, by confession or oath of one witness, be committed to the house of correction, there to be kept to hard labour, or to the common gaol, for any time not exceeding two months, nor less than fourteen days, at their discretion (3). Any two justices within the limits aforesaid, upon information on oath made to them by any person whatsoever, that there is reason to suspect that any person using the trade of a master or journeyman taylor, hath given or received greater wages than as aforesaid, shall issue their summons, requiring any clerk, foreman, apprentice, servant, or other person employed by the person so suspected to have offended, or any other person whose attendance such informant shall think necessary for the purpose of giving evidence, to attend such justices, or some other two justices acting for such county or place, at a time and place in such summons specified, to testify concerning the premises; and if such person so summoned shall not attend, and proof shall be made of the service of such summons, either personally or by leaving the same at the last or usual place of abode of such person, such two justices, or any other two justices acting for such county or place, unless a reasonable excuse be made for such non-attendance to the satisfaction of such justices, shall issue their warrant to apprehend and bring such person before them,

(1) 17 Geo. 1, st. 1, c. 23, s. 9.
(2) 8 Geo. 3. c. 17, s. 1.
(3) Id. s. 2.

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or some other two justices acting for the said county or place, to be examined touching the premises in the said information contained; and if any such person so attending, or being brought before such justices, shall refuse to be examined or give testimony, he shall, by the said justices, be committed to the house of correction, until he shall submit to be examined and give testimony as aforesaid (1). To prevent different rates of wages, the mayor, aldermen, and recorder of London, at their general quarter sessions or general sessions, shall, from time to time, on application to them made, alter, regulate, and order the wages for persons employed in the business of making men's and women's clothes, within London and five miles thereof, and the hours of work; and within fourteen days after making every such order, shall cause the same to be printed and published in such manner as to them shall seem meet, at the reasonable expence of the persons applying for the same (2). The advertising such orders of sessions three times in any two daily newspapers in London or Westminster, shall be deemed sufficient notice and publication (3). This act does not extend to regulate the wages or hours of work of persons employed as foremen, or to hinder the paying or receiving other wages (not exceeding 6d. an hour in time of general mourning, and 3d. an hour at any other time), before or after the hours of work limited as aforesaid, so as such over-work be not at any one time less than one hour, nor be done in fraud of the aforesaid regulations (4). And if any master or other person using the trade of a taylor, residing within the limits, shall employ any person out of the said limits, with intent to elude this act, and shall give greater wages than as aforesaid, he shall forfeit £500, with costs, half to the king and half to him that shall sue, to be recovered by action of debt (5). Persons convicted by the two justices as aforesaid may appeal to the next general or general quarter sessions, giving immediate notice of such appeal, and finding sufficient security, to the satisfaction of such justices, for being personally present at the said sessions, and for prosecuting the appeal with effect, and abiding by the judgment of the court. The sessions may award costs to either party; and if the conviction be confirmed, the appellant shall be committed to prison for the time specified in the conviction, and until payment of the costs. (6)

(1) 8 Geo. 3. c. 17 s. 3.
(2) Id. s. 4.
(3) Id. s. 5.
(4) Id. s. 6.
(5) Id. s. 7.
(6) 8 Geo. 3. c. 17. s. 8.

SERVANTS IN PARTICULAR.
*Woollen and other manufactures.*

The embezzlement, spoliation, and other breaches of duties on the part of persons in the *woollen* and other manufactures, are punishable before justices of the peace by imprisonment or fine. By the 22 Geo. 2. c. 27. and 17 Geo. 3. c. 56., if any person hired or employed to make any felt or hat, or to prepare or work up any woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, or silk manufactures, or any manufactures made up of wool, fur, hemp, flax, cotton, mohair, or silk, or of any of the said materials, mixed one with another, shall purloin, embezzle, secrete, sell, pawn, exchange, or otherwise unlawfully dispose of any of the materials with which he shall be entrusted, whether the same be or be not first wrought up, and be convicted thereof, by the oath or affirmation of the owner or other credible witness, or confession before two justices, he shall, for the first offence, be committed to the house of correction or other public prison, there to be kept to hard labour, for not less than fourteen days, nor more than three months; and for a second, or any other subsequent offence of the same kind, not less than three months, nor more than six months; and the justices may likewise, for the first or any subsequent offence, order the offender to be once publicly whipped, if such additional punishment shall by them be deemed proper (1).

Receiving materials or selling them, etc.

If any person shall be convicted as aforesaid of buying, receiving, or taking by way of gift, pawn, pledge, sale, exchange, or in any other manner, from any person whom he knows to be hired or employed to make or prepare, or work up any of the said manufactures, or any of the said materials mixed one with another, any thrums or ends of yarn, or any other materials of wool, fur, hemp, flax, cotton, or iron, or any leather, mohair, or silk, whether the same be or be not first wrought, made up, or manufactured, the consent of the hirer or employer not being first had, or of buying or receiving in any manner whatsoever from any other person, any of the said materials, whether the same be or be not first wrought, &c. knowing the same to be so purloined or embezzled, he shall, for the first offence, forfeit not more than £40, nor less than £20; the same to be applied by direction of the justices, in the first place, to defray the expences of the prosecution; next, to make such satisfaction to the party injured as the justices shall think proper; afterwards, to the informer a sum not exceeding £10;

(1) 22 Geo. 2. c. 27. s. 1.—17 Geo. 3. c. 56. s. 1, 2.

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and the remainder, if any, to the poor of the place where the conviction shall be, or to such other public charity as the justices shall appoint: and if the said penalty shall not be paid on conviction, the justices shall commit the offender to the house of correction, or other public prison, there to be kept to hard labour, for any time not more than six months, nor less than three months, unless the penalty shall be sooner paid, or the justices may send him to the house of correction or other public prison for three days, exclusive of the day of commitment, with an order that within the said time the offender shall be once publicly whipped at the market place, or some other public place where the offender shall be committed; for a second offence, if a person brought before the justices shall be charged therewith upon oath or solemn affirmation, they shall not proceed to convict him, but shall commit him to the house of correction or other public prison, till the next general or general quarter sessions, or till he shall have entered into recognizance to answer for such offence at the said sessions, and the justices there shall hear and determine the matter; and if the person shall be convicted, he shall forfeit not more than £100, nor less than £50, to be recovered and distributed under direction of the justices, in like manner as the penalty for the first offence; and if not paid on conviction, the justices shall commit him to the house of correction or public prison, there to be kept to hard labour, not more than six nor less than three months, unless the penalty be sooner paid, or they may send him to the house of correction or other public prison for three days, exclusive of the day of commitment, with an order that within that time he shall be once publicly whipped as aforesaid (1). And if any person shall sell, pawn, pledge, exchange, or otherwise unlawfully dispose of any such materials, knowing them to have been purloined or embezzled, he shall suffer like punishment as for receiving the same (2). Although the purloined materials be worked up or otherwise disposed of, so that it may be difficult to convict the offender, two justices as aforesaid, or the justices in sessions respectively, on proof on oath of one witness, that such person hath purloined or embezzled, or received such materials knowing them to be purloined or embezzled, or received from some person not entitled to dispose thereof, may convict the offender although no proof shall be

(1) 22 Geo. 2. c. 27. s. 2.—17 Geo. 3. c. 56. s. 3, 4.

(2) 17 Geo. 3. c. 56. s. 5.

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given to whom such materials belong (1). All which provisions, in respect of materials, extend to all tools and implements with which any person shall be entrusted for manufacturing the said materials, and also to all drugs and ingredients wherewith any person shall be entrusted for dyeing, preparing, or manufacturing the same (2). If any person shall wilfully damnify, spoil, or destroy, without consent of the owner, any work committed to his charge, he shall, on conviction as aforesaid, forfeit to the owner double value, to be levied by distress by warrant of two justices; for want of sufficient distress the offender shall be committed to the house of correction, there to be kept to hard labour for any time not exceeding three months, or till satisfaction be made to the party aggrieved for the same (3).

Not completing work.

If a person hired or employed to work up materials for a master, wilfully neglect the performance thereof for eight days successively, or having taken in any materials for manufacture from one master, shall afterwards take in any for manufacture from another master, or suffer himself to be employed or retained in any other occupation sooner than eight days before the completion of the work first taken, he shall, on conviction on the oath of one witness, be sent in like manner to the house of correction or other public prison, there to be kept to hard labour not exceeding three months nor less than one; and if any person shall receive any of the said materials in a fictitious name, in order to be manufactured, or shall receive the same in his own name to be manufactured by himself, and afterwards deliver them or any part thereof to any other person to be manufactured without the owner's consent; or if any carrier or other person employed to deliver such materials, shall deliver the same to any other person than him to whom the owner ordered or intended them to be delivered, he shall suffer as in case of neglecting the performance of the work for eight days (4).

Master' entry to view work.

The owner of materials may enter, at all reasonable hours in the day-time, into the shop or out-house of any person employed by him to work up any of the said materials, or other place where the work shall be carried on, and there to inspect the condition thereof, and if any person shall refuse to permit such entrance or inspection, he shall forfeit any sum, at the discretion of the justices before whom he shall be convicted, not exceeding 40s. nor less than 10s., to

(1) 7 Geo. 3. c. 56. s. 6.
(2) Id. s. 16.
(3) 12 Geo. 1. c. 24. s. 2 — 22 Geo. 2. c. 27. s. 12.
(4) 17 Geo. 3. c. 56. s. 8, 9.

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to be recovered and applied as for having materials without being able to give a satisfactory account how he came by them (1). And if any person entrusted with any of the said materials, in order to work up the same, shall neglect, for the space of eight days, after the work shall be finished, to return (if required by the owner) so much of the said materials as were not used, he shall suffer as for purloining or embezzling (2). Two justices, upon complaint on oath (or solemn affirmation), that there is cause to suspect that any such purloined or embezzled materials, whether mixed or unmixed, wrought or unwrought, are concealed in any dwelling-house, out-house, yard, garden, or other place, may by their warrant cause the same to be searched in the day-time; and if any such suspected materials be found therein, they may cause the same, and the person in whose house, outhouse, yard, garden, or other place they shall be found, to be brought before any two justices of the county, &c.; and if such person shall not give an account to the satisfaction of such justices, how he came by the same, the said person shall be adjudged guilty of a misdemeanour, and shall be punished in manner herein-aftermentioned, although no proof shall be given to whom such materials belong (3); and every peace-officer and beadle within his ward, parish, or district, and every watchman, during the time he is upon duty, may apprehend any person who may reasonably be suspected of carrying or conveying, after sunsetting and before sunrising, any such materials, and the same, together with such person, may carry before two justices of the county, &c.; and if the person shall not produce the party duly entitled to dispose thereof, of whom he bought or received the same, or some person to testify upon oath or affirmation the sale or delivery thereof, or shall not give a satisfactory account how he came by the same, the said person shall be adjudged guilty of a misdemeanour, and punished in manner hereinafter mentioned, although no proof shall be given to whom such materials belong (4); provided. that in either of these two cases, if the person, who shall be brought before the two justices, shall request them to appoint a reasonable time to produce the person duly entitled to sell or dispose of the same, or from whom he bought or received the same, or a witness to prove the sale or delivery thereof, the justices may appoint such time, and issue a summons to the

Search warrant for purloined materials, and forfeitures.

(1) 17 Geo. 3. c. 56. s. 15.
(2) Id. s. 7.
(3) Id. s. 10.
(4) Id. s. 11.

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constable where such person or witness shall reside, requiring him to appear in order to be examined and give evidence, but such person, at the time of his request, shall enter into recognizance, with or without surety, as the justices shall please, for his appearance at the time, or for want of such recognizance, shall be committed until such time appointed (1). When a person shall be convicted of a misdemeanour in either of the two cases aforegoing, the justices may cause the materials so found or seized, to be deposited with the churchwardens or overseers, or in any other convenient place, for any time not exceeding thirty days, and in the meantime shall order the churchwardens and overseers, or one of them, to advertise the same in some newspaper usually circulated there, or otherwise to cause notice to be given by some public cryer, and by fixing such notice on the church or chapel door, that those who have lost such materials, or any reputable person on their behalf, may come and claim the same, and if any person can prove them to be his, the justices shall order them to be restored to the owner, he paying the charges of removing, depositing, and giving notice. But if before the end of thirty days no person shall come and prove his property, the justices shall order the same to be sold, and, after deducting such charges as aforesaid, together with the charges of sale, one moiety of the money arising from such sale shall be given to the person apprehending or prosecuting, and the other moiety either to the poor where the conviction shall be, or to such public charity as the justices convicting shall appoint, and the offender shall forfeit for the first offence £20, for the second offence £30, and for every subsequent offence £40. All which said respective forfeitures shall be levied by distress, and distributed half to the informer, and half to the poor where the conviction shall be, or to such public charity as the justices convicting shall appoint; if no sufficient distress can be found, the said justices shall commit the offender to the common gaol, or other prison, or house of correction, for one month for the first offence, for two months for the second offence, and for six months for every subsequent offence (2). If any person hired, retained, or employed as a journeyman dyer, servant, or apprentice, in the dyeing of any felt or hat, or any woollen, linen, fustian, cotton, leather, fur, flax, mohair, or silk materials, shall, without consent of the master or

Dyeing without consent of owner.

(1) 17 Geo. 3. c. 56. s. 12. (2) Id. s. 13.

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person hiring, &c., dye any of the same, whether wrought or unwrought, or without consent shall wilfully receive any such for the purpose of dyeing the same, whether dyed or prepared for dyeing, or shall offer any such materials to any such journeyman, &c. for such purpose, he shall, on conviction on the oath of one witness before two justices, for the first offence forfeit 10s., for the second offence 20s., and for every subsequent offence 40s.; or if any person shall procure any such materials to be dyed by any person so hired, &c., as such journeyman, &c., without consent of the master or employer, he shall forfeit for the first offence 5s., for the second offence 20s., and for every subsequent offence £4, to be recovered as aforesaid before two justices on the oath of one witness, to the use of the informer; and in case of nonpayment on conviction, the offender to be committed to the common gaol or house of correction for any time not exceeding one month (1). By the 14 Geo. 3. c. 44. s. 1. so much of the 22 Geo. 2. c. 27. as relates to the punishment for reeling false and short yarn is repealed; and, by s. 2., if any person shall reel false or short yarn, and shall be thereof convicted by the oath of the owner of the yarn, or of one witness, or by confession before one justice where the offence was committed, or the offender shall reside, he shall for the first offence forfeit not exceeding 20s. nor less than 5s., for the second offence not exceeding £5 nor less than 40s., and for the third and every other offence it shall be lawful for the justice to commit him to the house of correction or other public prison, there to be kept to hard labour for one calendar month, and also to order him to be once publicly whipped at the market town nearest to the place where the offence was committed on a market day, all which forfeitures shall go to the party grieved (2). A form of conviction is given by the act, which conviction is to be written on parchment, and filed at the next sessions (3). If any person so convicted shall be desirous of appealing to the next sessions, he may, at the time of the conviction enter into recognizance conditioned to try such appeal, abide the order of and pay such costs as shall be adjudged by the justices at such sessions. And the justices there shall take cognizance of the appeal, and may affirm such conviction, and award such costs as they shall think proper; and if not paid according to the order of the said justices, such costs may be

False reeling of yarn.

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(1) 17 Geo. 3. c. 56. s. 17.
(2) 14 Geo. 3. c. 44. s. 2.
(3) Id. s. 3.

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recovered by distress and sale of the goods of the person who ought to pay the same, by warrant of one justice, where such person shall be or reside, for want of distress to be committed to the common gaol for three calendar months, and no proceedings on this act shall be quashed for want of form, nor removed by certiorari or other process (1). If the said pecuniary penalties for reeling false or short yarn, together with the costs and charges attending the prosecution, shall not be paid according to the order of the justice or justices by whom the conviction shall be made, the same shall be levied by distress, together with the costs and charges of the distress and sale, and if goods sufficient cannot be found to answer the penalties and costs, such justice shall commit the offender to the common gaol or house of correction for one calendar month, unless such penalties and forfeitures, and charges, and the charges of distress and sale shall be sooner paid; and the persons aggrieved on this act may appeal to the next sessions, who shall finally hear and determine the matter of complaint, and make such order as shall seem to them reasonable.

Combinations for settling prices or wages, etc.

All contracts or agreements, and all bye-laws, rules, and orders made in any unlawful clubs and societies by any persons employed in any *woollen manufactures*, or in the making of felts or hats, or in any manufacture of silk, mohair, fur, hemp, flax, linen, cotton, fustian, iron, or leather, or in any manufactures made up of wool, fur, hemp, flax, cotton, mohair or silk, or any of the said materials mixed one with another for regulating any of the said trades, or for settling the prices of goods, or for advancing their wages, or for lessening their usual hours of work, shall be void; and if any such person shall be concerned in any contract, covenant, or agreement, bye-law, ordinance, rule or order of any club, society, or combination, by the 12 Geo. 1. c. 34. declared to be illegal, or shall attempt to put the same in execution, he shall on conviction in three calendar months, on the oath of one witness before two justices be committed either to the house of correction, to be kept to hard labour for any time not exceeding three calendar months, or to the common gaol, not exceeding three months (2). And if any person shall assault or abuse any master or other person concerned in any of the said manufactures, whereby he shall

(1) 14 Geo. 3. c. 44. s. 5.

(2) 12 Geo. 1. c. 34. s. 1.—22 Geo. 2. c. 27. s. 12.

SERVANTS IN PARTICULAR.

receive any bodily hurt for not complying with any such illegal bye-laws, &c., or shall write or cause to be written, or knowingly send or cause to be sent any letter or other writing, or message, threatening any harm to any such person, or threatening to burn, pull down, or destroy any of his houses or outhouses, or cut down or destroy any of his trees, or to maim or kill any of his cattle, for not complying with any demands of his workmen, or for not conforming to any such illegal bye-laws, &c., he shall on conviction by indictment, to be found in twelve calendar months, be guilty of felony, and transported for seven years. (1)

The master shall pay his workmen in money, and not otherwise, (or in bank of England or country bank notes, if not objected to at the time) (2), and shall not make any deduction on account of any goods sold or delivered previously to the agreement; and for the more easy recovering the said wages, two justices, upon complaint (in three months) (3) shall summon the party offending, and for non-payment shall issue their warrant to levy the same by distress, and for want of sufficient distress shall commit the offender to gaol for six months, or until he shall pay or give full satisfaction for the same, to the good liking of the party grieved; and every person paying the same otherwise than in money, shall forfeit £10 (one moiety to the informer, and the other moiety to the churchwardens and overseers of the poor; or, if in Scotland, to the kirk session of the parish for the use of the poor) (4), to be levied by distress (5). In order to recover which penalties, one justice, on complaint to him on oath, may issue his warrant for apprehending the person accused and bringing him before two justices, who shall proceed to hear and determine the offence (6). And any inhabitant of the parish, township, or place, where the offence shall be committed, shall be deemed a competent witness, notwithstanding his being an inhabitant there (7). A form of conviction is given by the act (8); but it is observable, that it will not be sufficient merely to follow that form, as the punishment is discretionary with regard to some of the offences included in the act. Where there is a discretion as to the duration of imprisonment to be suffered for want of distress, as in cases depending upon section 4, the general practice of the

(1) 12 Geo. 1. c. 34. s. 6.
(2) 58 Geo. 3. c. 51. s. 1.
(3) 13 Geo. 1. c. 23. s. 17.
(4) 58 Geo. 3. c. 51. s. 3.
(5) 12 Geo. 1. c. 34. s. 4.
(6) 17 Geo. 3. c. 56. s. 19.
(7) Id. s. 18.
(8) Id. s. 21.

SERVANTS IN PARTICULAR.

sessions has been to require such imprisonment to appear on the face of the conviction, and it seems to be necessary that it should so appear. It is to be observed, that section 2(., which gives the appeal, directs that, in default of payment of the penalty on affirmance of the conviction, the party is to be commited for the same time as shall be directed upon the original judgment of conviction (1). If any person shall think himself aggrieved by any order or judgment of the two justices, he may appeal (and at the time of the conviction the justices shall make known to him his right to appeal) to the next general or general quarter sessions; such person at the time of the conviction giving to the justices notice in writing of his intention to appeal, and entering into recognizance with sufficient sureties to try the appeal and to abide the judgment, and pay such costs as shall be awarded by the sessions; but if he shall not at the time of giving notice enter into such recognizance, the justices to whom such notice of appeal shall have been given shall commit him to the house of correction or other public prison, there to remain until the next sessions, unless such recognizance shall be sooner entered into; and the justices at such sessions, on proof of notice, shall hear and determine the appeal, and award costs to either party. And if the judgment be affirmed, the appellant shall, within 48 hours, suffer such corporal punishment as was directed to be inflicted upon him for the offence, or shall immediately pay the sum which he shall have been adjudged to forfeit, together with the costs of the appeal; or, in default of such payment, shall be committed to the common gaol or house of correction in the same manner and for the same time, to be computed from the affirmance of the conviction, as shall be directed by the original judgment, unless he hath been imprisoned under the original conviction, in which case the time for which he shall have been so confined shall be included in the order of confirmation (2). The conviction to be certified to the next sessions, there to be filed among the records; and no proceeding to be quashed for want of form, nor removeable by *certiorari* into the courts of king's bench (3). Upon a conviction by two justices for an offence against statute 17 Geo. 3. c. 56. s. 14., if the justices at the time of such conviction make known to the party convicted his right to appeal, and he declines appealing, they need

(1) 8 Evan's Col. Stat. part 6. clas 3. p. 904. (1)—Burn's Justice, vol. 5. p. 140., where see the proper form.

(2) 17 Geo. 3. c. 56. s. 20.

(3) Id. s. 22.

not go on to inform him of the necessary steps to be taken in order to appeal. (1)

SERVANTS IN PARTICULAR.

Clothiers, etc. Disputes determined by two justices.

By stat. 13 G. 1., c. 23. "for the better regulation of the woollen manufacture, and for preventing disputes among the persons concerned therein, and for limiting a time for prosecuting for the forfeiture, appointed by an act of the 12th year of his Majesty's reign, in case of payment of the workman's wages in any other manner than in money;" it is enacted, that all disputes and demands relating to work, wages, or damages between any clothier, or maker of woollen goods or goods mixed with wool, and any weaver or other person or persons employed in such manufactures, shall be heard and determined by two or more justices of the peace for the county, division, or place where such dispute or demand shall arise, who are hereby required and authorized, upon complaint to them made, to summon the parties, and to hear and examine upon oath and adjudge such satisfaction, and to give such costs and damages to the party aggrieved, as in their discretion shall seem reasonable, and to issue their warrant or warrants to levy such costs and damages by distress and sale of the goods and chattels of such person or persons who shall refuse for the space of ten days to pay such costs and damages by them so adjudged, and for want of a sufficient distress to commit the party to the county gaol or house of correction for any time not exceeding three months, or until satisfaction shall be made by the party so offending (2). But it has been held, that this does not relate to demands against clothiers by the owner of a scribbling and carding mill for work done by him for the clothiers in teasing, scribbling, carding, and stubbing the wool at his mill. Lord Ellenborough, C. J. said, the penal provisions of this statute show that it is not applicable to the adjustment of debts between parties of equal rank in trade. Wages is the emphatical word denoting the character of the person who is authorized to apply, and all the words seem to express the relation between master and servant. This view of the statute is confirmed by reference to other statutes on the same subject, especially 14 G. 3. c. 25. (3). It is provided, that it shall be lawful for any person aggrieved by any order of such justices, to appeal to the justices of the peace at the next general

(1) Rex v. Justices of West Riding of Yorkshire, 3 M. & S. 493.

(2) 13 Geo. 1. c. 23. s. 5.

(3) Rex v. Haywood and another, 1 M. & S. 624.

SERVANTS IN PARTICULAR.

quarter sessions to be holden for the county, division, or place where such order shall be made, giving six days' notice in writing of such appeal; and the justices in their quarter sessions are hereby authorized and required to hear and determine the matter of such appeal, and make such order and to award such costs and damages as to them in their discretion shall seem reasonable, and to levy by their order or warrants such costs and damages so awarded by distress and sale of the goods and chattels of any person or persons who shall refuse to obey the same; and for want of sufficient distress to commit the party to the county gaol or house of correction for any time not exceeding three calendar months, or until satisfaction shall be made by the parties offending, and such award or order of the justices at the quarter sessions shall be final, nor shall the proceedings of any justice or justices out of sessions, or of the justices in their sessions, in pursuance of this act, be liable to be removed by certiorari, or other form or process of law (1). By the 1 Ann. st. 2. c. 18., if any person employed in the woollen, linen, fustian, cotton, or iron manufactures, shall embezzle or purloin any wefts, thrums, or ends of yarn, or any other materials of wool, hemp, flax, cotton, or iron, or shall reel short or false yarn, and shall be convicted by oath of one witness or confession before one justice, he shall forfeit double the value of the damages; and if he shall neglect or refuse to pay the same, the justice shall commit him to the house of correction until satisfaction shall be made; and if it shall appear to the justice that he is not able to make satisfaction, he shall be there publicly whipped and kept to hard labour not exceeding fourteen days (2). And every person buying or receiving any wefts, thrums, or ends of yarn, or other materials of wool, hemp, flax, cotton, or iron, shall suffer in like manner (3). And all payments to the said workmen shall be in money, and not in cloth, victuals, or commodities; and all wool delivered out to be wrought up shall be delivered with declaration of the true weight thereof, on pain that every offender, in either of the said cases, shall forfeit double the value of what shall be due for such work; and if any workman shall be guilty of any such fraud or default in the work by him done, he shall answer double damages (4). And all wages, demands, frauds, and defaults of labourers in the said manufactures, concerning work done, shall be deter-

Embezzling.

Payment of wages.

58 G. 3. c. 51.

(1) 13 Geo. 1. c. 23. s. 6.
(2) 1 Ann. stat. 2. c. 18. s. 1.
(3) Id. s. 2.
(4) Id. s. 3.

mined by two justices, who may summon and examine witnesses on oath; persons aggrieved may appeal to the sessions to be holden next after notice of the order of the said two justices, and if the sessions give judgment against the appellant, they shall order him to pay such costs as to them shall seem meet (1). By the 13 Geo. 2. c. 8., if any person employed in the working up of any woollen, linen, fustian, cotton, or iron manufactures, shall purloin, embezzle, secrete, sell, pawn, exchange, or otherwise illegally dispose of any of the materials, whether the same or any part thereof be or be not first wrought up, or shall reel short or false yarn, and shall be convicted thereof, as by the 1 Ann. st. 2. c. 18., he shall forfeit double value of the damages, together with such costs as the justice shall think reasonable; and if not paid immediately, the chief justice shall cause him to be committed to the house of correction, to be whipped and kept to hard labour, not exceeding fourteen days: and for a second or other subsequent offence, for such embezzling or purloining, he shall forfeit four times the value of the damages, together with such costs as the justice shall judge reasonable; and if not paid immediately, then such or any other justice shall cause him to be committed to the house of correction, to be kept to hard labour for any time not exceeding three months, nor less than one month; and also during the time of such commitment shall cause him to be publicly whipped in the market-town where he shall be committed, at the market-place or cross, once or oftener, as to such justice shall seem reasonable (2). And the receivers of the same shall be subject to the like penalties. (3)

SERVANTS IN PARTICULAR.

Embezzling.

The manufacture of *silk* in England has fluctuated extremely, being dependent on fashion, and never supported in any great degree by the benefits of an export trade, since the nations on the continent have rivalled and generally surpassed us in this article; yet when silk was much used in dress, especially among females, great numbers of British artists were employed in fabricating it; they had long enjoyed great profits and considerable reputation when, in 1685, their art was greatly improved by the refugees from France, who sought in this country an asylum against a most inhuman and injudicious per-

SILK.

(1) 58 Geo. 3. c. 51. s. 4.
(2) 13 Geo. 2. c. 28. s. 1.
(3) Id. s. 2.

SILK. secution. The encouragement given to the manufacture by the restraints on the importation of foreign wrought goods (1), by the facilities afforded to the import of raw silk (2), and to the exportation of British manufactured goods (3), have been considered in a former volume. As a preliminary requisite to a person's exercising the trade of a silk thrower, it is required that he shall have served seven years' apprenticeship; a failure to comply with which regulation subjects him to a penalty of 40s. a month, half to the king and half to the informer, to be recovered in any court of record, or at the assizes or quarter sessions (4). And the statute 13 Geo. 3. c. 68. provides, that no silk-weaver in London or Westminster, or the liberty of the Tower, or the county of Middlesex, shall have more than two apprentices at one time on pain of £20, to be recovered before two justices on the oath of one witness, the penalty to be paid into the hands of the master of the weavers' company, to be applied for the use of distressed journeymen, and all apprentices exceeding the number of two to be discharged (5). The statute 22 Geo. 3. c. 40., for the protection of the premises of the manufacturer, makes it felony for any person, whether by day or night, to break into or enter by force any house or shop, with intent to cut or destroy any velvet, wrought silk, or silk mixed with any other materials, or other silk manufacture in the loom, or any warp or shute tools, &c., prepared or employed in or for the making thereof, or wilfully and maliciously to break or destroy any tools, tackle, or utensils used for weaving or making any such velvet, &c., or other silk or silk manufacture, without the consent of the owner. (6)

SOAP. The making of soap is regulated by several provisions, which are principally intended to secure the revenue from fraud (7). No person is permitted to make soap within the limits of the head office of excise in London, unless he occupy a tenement of £10 a year, and is assessed to and

(1) Ante, 1 vol. 520.—How imported under the navigation acts, id. 179, &c.
(2) Ante, 1 vol. 539.
(3) Ante, 1 vol. 589.
(4) 13 & 14 Car. 2. c. 15. s. 2.
(5) 13 Geo. 3. c. 68. s. 7.
(6) 22 Geo. 3. c. 40. s. 2. See East's Pl. Cr. 1077.

(7) See ante, as to soap in general, vol. 1. p. 834.; the licence to be taken out, id. 838., remembering that the 55 Geo. 3. c. 30. is continued by 59 Geo. 3. till 1822, id. 850.; and as to the renewal and transfer of licences, id. 837, 9.; and as to the entry of the places for making, &c., ante, 1 vol. 840.

pays the parish rates; nor elsewhere, unless he is assessed and pays to church and poor (1); and every soapmaker is required to take out a licence, to be renewed annually, ten days at least before the expiration of the year (2); but persons in partnership require only one licence for one house (3). They are also required to provide sufficient wooden covers for all coppers and other utensils, wherein they boil hard soap, and this regulation has been extended to every kind of soap (4); which covers are to be locked and sealed down by the officer whenever any soap is left in the same (5); and the furnace door, cover, and ash-hole door is also to be locked and sealed at all times, except when the same is at work (6). Regulations are also made for preventing the use of any private conveyances or pipes, empowering officers to break up the ground to search for the same, and cut them up if any found (7); if not, the officer must make compensation for the injury done (8). On cleansing or taking soap out of the coppers, the makers are required to give notice (9); and certain spaces of time are limited for completing the cleansing and taking out of the soap, according to the kind of soap, and the number of frames into which the same is put (10). Coppers and other utensils must be cleaned once in every month (11). The frames used in making hard soap, for cleansing or putting the same into when taken out of the vessel when boiled or prepared, must be either square or oblong only, and the bottom, sides, and end of such frames are to be two inches thick, and not more than forty-five inches long, nor fifteen inches broad, the same being marked and numbered at the expense of the soap-maker (12). The making of yellow or mottled soap is regulated by 59 Geo. 3. c. 90., by which every maker is required, as soon as the same is cleansed or taken out of the vessel in which it has been made, to add and put into the copper or vessel all the fob and skimmings taken out of the same, and also grease, in the propor-

SOAP.

(1) 17 Geo. 3. c. 52. s. 1.
(2) 40 Geo. 3. c. 69. sched. (A). 24 Geo. 3. c. 41. sess. 2. s. 7., ante; 1 vol. 838.
(3) Id. s. 8. Ante 1 vol. 839.
(4) 32 Geo. 3. c. 21.
(5) 5 Geo. 3. c. 43. s. 15.— 12 Geo. 3. c. 46. s. 7.
(6) 17 Geo. 3. c. 52. s. 8.— 24 Geo. 3. sess. 2. c. 48. s. 9.— 32 Geo. 3. c. 21.
(7) 17 Geo. 3. c. 52. s. 10, 11, 12.
(8) Id. s. 12.
(9) 59 Geo. 3. c. 90. s. 1.— 17 Geo. 3. c. 52. s. 14.
(10) Id. s. 2. See also 47 Geo. 3. sess. 2. c. 30. s. 10.
(11) 1 Geo. 2. c. 36. s. 14, 15.— 17 Geo. 3. c. 52. s. 14.
(12) 5 Geo. 3. c. 43. s. 17.

SOAP. tion of at least one hundred weight of grease for every ton of yellow or mottled soap which the copper or vessel shall be by the officer computed to boil or make, and immediately re-melt such grease in the presence of the officer of excise (1). No lees fit for the making of soap may be manufactured for sale; nor may any barilla be ground or pounded for sale; nor when ground or pounded be sold, exceeding the weight of 28lbs. of such barilla at one time (2). In the removal of soap exceeding the quantity of 28 lbs., the word "soap" must be painted or marked in large letters of at least two inches long, on every chest, basket, box, cask, or package containing the same; and the same word must be painted or marked in letters of at least three inches in length, on every waggon, cart, or other carriage, carrying more than 28 lbs., in some conspicuous and open part of the same, unless it is carried by a person being a known and public or common carrier of goods and merchandise from one part to another (3). Officers may inspect the soap and the accompanying certificate (4). Soap makers are also to keep books, and enter therein all quantities of soap sold exceeding 28lbs. (5). Every barrel of soap must contain 256 lbs. avoirdupois; every half barrel 124 lbs.; every firkin 64 lbs.; and every half-firkin 32 lbs.; besides the weight or tare of the cask (6). Soap makers must keep scales and weights, and assist the excise officers in the use of them (7); and must weigh their materials for making soap before the officer, on penalty of £50. (8)

WOOL. The manufacture of wool is regulated in its various stages by several different statutes (9). Being the staple commodity of the realm, this article has been an object of constant anxiety to the legislature; and, in some instances, the provisions by which the

(1) 5 Geo. 3. c. 43. s. 3.
(2) 59 Geo. 3. c. 90. s. 4.
(3) Id. s. 7.
(4) Id. s. 9.
(5) Id. s. 8, 10.
(6) 10 Ann. c. 19. s. 8.
(7) Id. s. 19.
(8) 27 Geo. 3. c. 31. s. 19. See Burn, J. tit. Soap, and the numerous statutes there mentioned respecting this article.
(9) See as to the importation of woollen manufactures, wool cards, and articles connected therewith, ante, 1 vol. 519.; and as to the exportation thereof, ante, 1 vol. 572, &c. by 26 Geo. 3. c. 76. So much of the 14 Geo. 3. c. 71. and 21 Geo. 3. c. 37. as prohibited the exportation of wool cards or stock cards, not exceeding in value 4s. per pair, and spinner's cards, not exceeding 1s. 6d. per pair, used in the woollen manufacture, is repealed.

manufacturer has been controuled and regulated have been considered, of late years, as rather arbitrary than beneficial. By the 50 Geo. 3. c. 83. the statutes 1 Rich. 3. c. 8., 5 Hen. 8. c. 3., 27 Hen. 8. c. 13., and 33 Hen. 8. c. 19., are repealed. By a statute, 27 Ed. 3. sess. 2. c. 23., it was required that a certain number of *winders* of wool should be sworn, and that they should repair to the mayor of the staple at Westminster for the purpose of taking the oaths. This regulation having been found inconvenient and expensive, is repealed by the statute 28 Geo. 3. c. 38., which enacts, that the justices at the quarter sessions, or any adjournment, may administer to every person desirous of becoming a sworn winder of wool, and who shall produce a certificate under the hands of any two growers of wool, testifying, to the satisfaction of such justices, that the person is properly qualified, an oath to the following purport: "I, A. B., do swear, that I will truly and justly, without deceit, wind and fold all and singular the wool which I shall take upon me to wind and fold, without leaving or putting any clay, lead, stones, sand, tails, deceitful locks, lamb's wool, or any other thing, whereby the fleece may be made more weighty, to the deceit and loss of the buyer: and that I will not use any other deceit, craft, guile, or fraud, in the winding or folding of any such aforesaid wool. So help me God." An entry of administering the oath is made in the records of the sessions, and a certificate delivered by the clerk of the peace to the person sworn (1). But the act does not extend to prevent any one from employing a person in winding wool, although he has not taken the oaths after this manner (2). So to prevent frauds in the winding of wool, it is provided, that no person shall wind any fleece not sufficiently washed, except in counties where they do not use to wash sheep; nor shall wind with any fleece, clay, lead, stones, sand, tails, deceitful locks, cot, cals, couber, lamb's wool, or any other thing whereby the fleece may be the more weighty, to the deceit and loss of the buyer (except where fleeces are sold by number, and not by weight), on pain that the seller shall forfeit 6d. a fleece; half to the king, and half to him that shall sue (3). But as prosecutions were not frequent under this act, by reason of the penalty being but small, one moiety of it going to the king, and the great expence attending the recovery of it, it was enacted by the statute 28 Geo. 3. c. 38., that every person offending against the

Wool.

Winding wool.

(1) 28 Geo. 3. c. 38. s. 85.
(2) Id. s. 86.
(3) 23 Hen. 8. c. 17.

Wool. act should, in lieu of every 6d. therein directed to be forfeited, forfeit 2s., the whole to be paid to the finder or prover of the deceit; such offences to be determined by one justice residing at or near the place in a summary way, who shall summon the offender against whom any information is laid, and on his appearance or default examine into and give judgment in the premises; and in case the penalty in six days next after conviction, it shall be levied by distress, under warrant of the convicting justice (1). But if it appear to the satisfaction of the justice, that the matter complained of was not done or suffered with intent to deceive the buyer, or that any clay, sand, or earth found in such fleece was not intentionally put there to make it more weighty, but became mixed or connected with it by reason of the necessary pasturing, folding, or keeping of the sheep on which the fleece has been grown, subsequently to the rivering or washing of the sheep, the justice shall discharge the complaint, and acquit the person accused. It will be observed, that the penalty is imposed in the first instance by the statute above mentioned on the vender; but as it may frequently happen that the seller of such deceitful wool was not the person who wound it, or that it was so wound without the knowledge and consent of the seller, in such case the seller touching whom any complaint or information shall be made, and which is then pending, after he has received such summons, may apply to the justice who granted it, and require him, on information being given for the purpose, to summon the person who actually wound the wool to appear before him at such time and place as he shall think proper, (of which sufficient notice shall be given by such seller to the person complaining), and whether such winder appear or not, (proof being made of his having been duly summoned), such justice may hear and determine the matter of the complaint; and if it appear to his satisfaction that the wool complained of had been deceitfully wound by the person charged by the seller without his knowledge or consent, in such case the winder and not the seller shall be liable to the penalties; but if it appear otherwise to the justice, or be determined otherwise on appeal to the sessions (2), the seller shall remain subject to the penalties, and in case of non-payment of any such penalty or that the same cannot be recovered after conviction, every such person shall

(1) 28 Geo. 3. c. 38.
(2) By sect. 83, 4, of 28 Geo. 3. c. 38. appeal to sessions on notice and recognizance, &c.

be committed to the gaol or house of correction for a time not exceeding three calendar months, nor less than twenty-one days, unless the penalty and costs, if any be, sooner paid. (1)

Wool.

Working up ends of yarn or cloth, etc.

With regard to the working of cloth, the stat. 43 El. c. 10., 21 Jac. 1. c. 18., and 13 G. 1. c. 23., by which heavy penalties were inflicted upon manufacturers who should use or work up any ends of yarn, wefts, or other refuse, were repealed; but still if any person shall be found collecting, buying, or carrying in any bag or other conveyance any such ends of yarn, wefts, thrums, short yarn, or other refuse of cloth, drugget or other woollen goods, or goods mixed with wool (flocks and pinions only excepted), the constable may by warrant of one justice search such person, bag, or conveyance, and if any be found, he shall carry the offender before a justice of the peace, and on conviction before him by confession or oath of one witness, he shall be deemed an incorrigible rogue, and be liable to be punished as such (2). A rule having been obtained to shew cause why a certiorari should not issue directed to the justices of the peace for the county of Gloucester, to remove all orders and adjudications concerning a certain judgment and conviction of Mark Terrett, by the Rev. Geo. Hayward, a justice for that county, for buying 15 lbs. of Spanish ends of yarn fresh scribbled contrary to the statute, cause was accordingly shewn. The adjudications for the Easter sessions for Gloucester (in 1788), after reciting such conviction, and that it was returned to the sessions, and also reciting that the defendant was, on February 7th 1788, committed by Mr. H. to the house of correction, till the general quarter sessions at Easter, for buying of one Evans 7lbs. of Spanish ends, proceeded thus,—" and which conviction, on examination of the circumstances of the case, hath been, by this court, ordered to be quashed; and they order that the conviction for buying the 15lbs. of yarn of Burrough be confirmed, and that the defendant be, and he is hereby adjudged an incorrigible rogue, and that he be kept and detained to hard labour, in the house of correction of this county, for the space of two years, to be computed from this sessions." By the 12 Ann. st. 2. c. 23. s. 6. incorrigible rogues are to be committed by one justice to the next sessions, when they are to be whipped three times, and kept to hard labour for such further time as the sessions shall think fit. The statute 13 Geo. 1. c. 23., for the better regulation of the woollen manu-

(1) 28 Geo. 3. c. 38. s. 82.

(2) 13 Geo. 1. c. 23. s. 8.—17 Geo. 2. c. 5. s. 4.

WOOL, CLOTH, etc. facture, which created several penalties for certain offences therein specified, gave an appeal by sect. 6. to the sessions, but enacted, that neither the order of sessions, nor the proceedings of the justices out of sessions, should be removed by certiorari. The 8th section of that act directs, that any person who shall be convicted of buying ends of yarn, before one justice, shall be deemed an incorrigible rogue, in the manner directed by the 12 Ann. st. 2. c. 23. After passing this latter act, the 12 Ann. was repealed by the 13 Geo. 2. c. 24., which was itself repealed by the 17 Geo. 2. c. 5. The 4th section of this last statute declares, that all end gatherers offending against the 13 Geo. 1. c. 23 shall be deemed incorrigible rogues within the meaning of the act; and the 8th section enables the justice at the next sessions to order incorrigible rogues to be kept in prison for any time not exceeding two years, nor less than six months from the sessions; and this act does not take away the certiorari. In support of the rule, it was insisted, that all proceedings subsequently to the conviction before the justice, were under the 17 Geo. 2., which did not take away the certiorari, and the provision in 13 Geo. 1. which says, the proceedings under that act shall not be removed by certiorari, cannot be incorporated in the latter act, for express words only can take away a certiorari, whereas if it were decided; that the certiorari was taken away by the 17 Geo. 2., which expressly notices offences against the 13 Geo. 1., but is silent respecting the certiorari, it would be taking away a certiorari by implication. On the other side it was insisted that the 17 Geo. 2. c. 5. only increased the punishment, and that the provision of the 13 Geo. 1. respecting the certiorari applied both to the 17 Geo. 2. and the 12 Ann. st. 2. c. 23., and that if the argument urged in support of the rule were entitled to any weight, it would go to the length of saying, that no certiorari could be taken away, but by the same act of parliament that inflicts the punishment. Lord Kenyon, C. J., said that the court were of opinion, that in the proceedings, as far as they were under the 17 Geo. 2. c. 5. the certiorari was not taken away; but that they were clearly of opinion, that it was on the order of the magistrate under the statute 13 Geo. 1. c. 23. They therefore made the rule absolute, for a certiorari to remove the order of sessions only (1). The stat. 4 Edw. 4. c. 1. requires that every *fuller*, in his craft and occupation of fulling, rowing, or taysellling cloth, shall use taysells and no cards de-

(1) Rex v. Terrett, 2 T. R. 735.

ceitfully impairing the cloth, on pain of yielding double damages, to the party grieved; and every justice of the peace, mayor, master warden, bailiff, portreeve, constable of hundred, and steward of leet, in their respective liberties, may hear and determine the same, and commit the offender to the next gaol, until payment. Any person not grieved, is also at liberty to lay the information, in which case the offender shall forfeit to the king, or to such person as shall be entitled to fines or amercements within their jurisdiction, 3s. 4d., and they may make process against the party, in like manner as justices of the peace may do, for sureties of the peace, without any fee to be taken for the execution of their offices in this behalf (1). As to the searching of cloth, and to the length, breadth, and weight thereof, the early statutes were very numerous, but they are repealed by the statute 49 Geo. 3. c. 109. The yard for measuring such cloth consists of a standard yard, and the breadth of a man's thumb beside, or 37 inches in the whole. (2)

Wool, Cloth, etc.

To encourage the dressing and dyeing of cloth, the statute 6 Anne, c. 8. provides, that no person shall export any white woollen broad cloth, until he has paid a duty of 5s. for every such cloth, on pain of forfeiting the same, or the value thereof; half to the king, and half to the informer (4). By the 23 Geo. 3. c. 15., which repeals the 13 Geo. 1. c. 24., it is enacted, that if any person shall dye any woollen goods for mather blacks, not being first dyed throughout with woad and indigo, he shall forfeit for every piece of long Bocking bays, containing 70 yards or upwards, £5; of Colchester bays, or short bays, containing 35 yards or upwards, 50s.: for every piece of other woollen goods, 6d. a yard. And if any person shall dye any woollen cloth for woaded black, the same not being woaded throughout, he shall forfeit 2s. a yard (5). And all cloths, bays, and other woollen goods, truly mathered black, shall be marked with a red rose and

Dressing and dyeing cloth (3).

(1) 4 Edw. 4. c. 1. See ante, 1 vol. 572, 3, and id. note (3), as to the exportation of fuller's earth or cloth before fulling.

(2) Vide stat. 1 Geo. 1. st. 2. c. 15. s. 3. and other acts.

(3) As to the various methods and uses of dyeing, and the laws with regard to dyers in France and in Spain, and anciently in England, see Postlethw. Dict. Com. tit. Dyeing. And as to its introduction into England, see also 8 Hume, Hist. 329.

(4) See also 28 Geo. 3. c. 33. s. 11.; and as to dyeing-drugs imported, see ante 1 vol. 540.

(5) 23 Geo. 3. c. 15. s. 1 & 2. See the old stat. 13 Geo. 1. c. 24. and 23 Eliz. c. 9. Postlethw. Dict. Com. tit. Dyeing.

WOOL, CLOTH, etc.

a blue rose, and when truly woaded black shall be marked with a blue rose only, and if any person shall counterfeit or forge any of the said marks, or shall dye, stain, imprint, or affix any such mark to or upon any such woollen cloths falsely and deceitfully dyed, as or for mathered or woaded blacks, he shall forfeit £4 for every piece of such woollen goods upon which such mark shall be so stained, &c. (1). And if any person shall use any logwood, or logwood liquor, in dyeing any woollen goods blue, he shall forfeit £20 for each piece (2). Logwood, or as it is sometimes called blockwood, which had been previously prohibited, was allowed to be imported for the purposes of dyeing, by the statute 13 & 14 Car. 2. c. 11. s. 26. Searchers are to be appointed and sworn by the dyer's company in London, at dyers hall, or out of the limits assigned to the company, by the justices at sessions (3); and if any person shall oppose, obstruct, hinder, or prevent any searcher, he shall forfeit £10 (4). The searchers may search all shops, warehouses, workhouses, and tenter-grounds, or drying places, of all persons using or exercising the trade of dyeing of cloths, bays, or other woollen goods; and also of every person concerned in the dyeing, drying, or packing of any such cloths, &c.; and also all public warehouses, and other public places where any cloths, &c. packed up for exportation shall be deposited; and every such searcher may, at all seasonable times in the day-time, enter into any such shop, &c. and examine all or any woollen goods dyed black or blue, whether packed or unpacked; and also cut and take away a pattern or sample from either end of every such piece of woollen goods, as he shall think proper, for the purpose of trying and proving the same; such searcher taking to his assistance a constable or other peace officer of the parish or place, wherein such shop, &c. shall be; and every such constable or other officer shall aid or assist such searcher in the execution of this act, whenever application shall be made to him for that purpose (5). Prosecutions for offences against this act shall be commenced within 40 days. And by section 13, the penalties and forfeitures exceeding £5 shall be recovered in the courts at Westminster; those not exceeding £5 shall be recovered before one justice, which justice shall, on proof of the offence by confession or oath of one witness, levy the penalty by distress

(1) 23 Geo. 3. c. 15. s. 3.
(2) Id. s. 4.
(3) Id. s. 5, 6, 7, 8, 9, 10, 11.
(4) Id. s. 12.
(5) Id. s. 5.

and sale; if sufficient distress cannot be found, and the penalties and forfeitures be not immediately paid, the offender shall be committed to the house of correction, there to be kept to hard labour not exceeding three months. The said penalties, if in London or within ten miles thereof, shall go half to the informer, and half in such manner as the persons attending any meeting to be holden for the appointment of searchers within such limits shall appoint; and the whole of all other penalties and forfeitures recovered by virtue of this act, shall go the informer and prosecutor. If any person is aggrieved by a justice's order, he may appeal to the next general quarter sessions, giving reasonable and sufficient notice of such appeal to the prosecutor, the determination of the sessions to be final, the justices there to allow reasonable costs to either party, to be levied and paid in such manner as is usual in other cases of appeal from orders of justices to the general quarter sessions (1).

Wool, Cloth, etc.

Lien of dyers.

At common law, to assist a dyer in the recovery of the price of his work, he has a lien upon the goods delivered to him, which extends, according to the later authorities, to cover the general balance due from the person employing him, and not merely the sum due in respect of the particular goods detained (2). But whether such a general lien exists or not at common law, it may be set up by agreement between the parties; and, therefore, where at a meeting of the dyers, dressers, whisters, printers, and calenderers of Manchester and the neighbourhood, held at Manchester in April 1788, certain resolutions were adopted, in writing, signed, sealed, and delivered by the defendant, among other persons, stating, that "whereas a doubt had arisen, whether dyers, dressers, bleachers, printers, or calenderers, had a right to detain goods delivered to them, not only till payment were made for the work and labour performed upon the particular goods detained, but also for work and labour of the same kind performed upon goods already delivered out of the possession of such dyers, &c. they the undermentioned persons, being either dyers, dressers, &c., thereby gave public notice, that they would never thenceforward take into their possession any goods to be dyed, dressed, bleached, &c. unless under ex-

(1) 23 Geo. 3. c. 15. s. 14.

(2) Saville v. Barchard, 4 Esp. Rep. 53. Humphreys v. Partridge, 2 Mont. Blaw. 186, note 5 P. Olive v. Smith, 5 Taunt. 60. Rushforth v. Hadfield, 6 East, 523, argued; but see Green v. Farmer, 1 Bla. Rep. 651. 4 Burr. Rep. 2214, &c. Clare v. Waterhouse, 6 East, 523, note, and as to Fullers, see Sweet v. Pyne, 1 East, 4.

WOOL, CLOTH, etc.

press condition that the goods so delivered to them should not only be subject to the debt due for the work and labour performed upon them, but also for the general balance due from the persons employing them for work and labour of the same kind, performed upon goods which they had already delivered out of their possession." Such resolutions were held to be lawful, and not liable to objection as a combination to alter the course of trade; and a person to whose knowledge the resolutions came, and who afterwards delivered goods to one of the bleachers, was held to have assented to the terms of them, and could not claim back the goods without paying the balance of his general account. (1)

Yorkshire.

In the west riding of *Yorkshire*, there are a great many large mills, called scribbling and carding mills, which are filled with machinery for performing that process towards the making of cloth, which the wool undergoes between the time of its coming out of the wool-stapler's hands and its being delivered to the weaver. The work done at these mills is called teasing, scribbling, carding, and stubbing: teasing, or (as it is sometimes called) wooleying, is done upon a large cylindrical machine, which has a number of iron hooks on the outside; and being kept in a quick rotatory motion, catches the wool, which is brought to a proper distance, and drags it to pieces. Scribbling is next, which is done by a machine containing a number of rollers covered with cards, that run nearly in contact with each other, and the wool going between them, gets a second dressing. Carding is similar to scribbling; the wool gets further dressed, and comes out of the machine in long rolls, which are pieced together by children, and afterwards go to be stubbed, which is nothing more than spinning them smaller in a billy, an instrument which contains a number of spindles turned by the hand, and is then ready for the weaver. In this process, a great number of hands are employed in the mills; as many, if not more than were employed under the old system; but a vast deal more work is done in the same time. Formerly, the whole work which is now performed at the mills was done at the weaver's house; the scribbling was done by the hand upon a scribbling box covered with a coarse card; the carding was performed on a similar instrument, but less, and with finer cards; and the wool was afterwards spun upon a single spindle turned by the hand. By the 11 Geo. 2. c. 28. the justices at

(1) Kirkham v. Shancross, 6 7. 50. 498. Term. Rep. 14. 3 Bos. & P. 42—6,

the Easter sessions, yearly, for the west riding of the county of York, shall appoint searchers, such as have served apprenticeships to the trade of making narrow cloth, or have exercised such trade three years, and appoint them salaries, who shall be sworn before a justice, well and truly to execute the office of searching such narrow woollen cloth; and in the case of the death or sickness, or other disability of a searcher, one justice living near may appoint another till the next sessions, to be there confirmed, or another appointed (1); which cloth may be made of what length and breadth the maker shall think fit (2). In the head of every piece of narrow woollen cloth, the maker shall weave or set the first letters of his name, on pain, on conviction in one month, of forfeiting 20s.; the same shall be measured, when wet, at the mill, both by the millman and the searcher, who shall measure it down the middle for the length, and within the lists for the breadth (3). The millman shall rivet at one end a seal of lead, to be furnished by the clothier, and shall stamp his own name thereon at length, and the length and breadth in figures; the searcher shall also affix a seal of lead at the other end with his name, with the length and breadth in like manner; and they shall both keep books, wherein they shall enter the day and year when milled, the name and place of abode of the owner, and the length and breadth, and shall suffer the buyer to inspect the same (4). The miller or searcher offending herein shall, on conviction in eight days after the cloth is removed from the mill, forfeit £5 (5). If any person shall take off, alter, obliterate, counterfeit, or cut off the seal or figures, or letters, before it be sold or cut by the retailer, he shall (on conviction in one month) forfeit 40s. (6) A sum not exceeding 3d. for every such narrow cloth (to be ascertained by the justices at their Easter sessions) shall be paid by the owner, before it is carried to the mill, to such persons as the justices at Easter sessions shall appoint, to pay the searchers' salaries and other expenses of the act; and the millman, or owner and occupier of the fulling-mill, or the searcher, or such other person so appointed, may detain the cloth at the mill till paid, and if not paid in eight days after demand, the person appointed to receive the money may sell the same,

WOOL, CLOTH, etc.

Yorkshire searchers.

Name to be marked and cloth measured, both by millman and searcher.

(1) 11 Geo. 2. c. 28. s. 3, 4.
(2) s. 13.
(3) s. 1, 2.
(4) s. 1, 2.
(5) s. 2. 11.
(6) s. 7.

WOOL, CLOTH, etc.

and detain the money, rendering the overplus on demand (1). And the maker or owner shall measure the cloth when brought from the mill, before it is set on the tenter, and if it is less than the stamp, or by lying wet in an improper season for drying, is become less, he shall carry it to the millman and searcher, to be remeasured and restamped, on pain of forfeiting 5s. on conviction, in one month after the offence (2). The maker or owner may stretch the same one inch in a yard in length, and two inches in every three quarters in breadth, and so in proportion; but if any maker, buyer, owner, dresser, or dealer in such cloth stretch it further, he shall forfeit for the first half yard in length, or first inch in breadth so over-stretched, 10s., and for every other half-yard in length or half inch in breadth 20s. (3). The conviction to be before one justice, not being a dealer in cloth, or in buying or selling the same, on oath of one witness, reasonable notice being first given to the person accused (4). The forfeitures (if not paid in ten days after conviction, notice thereof being given at the offender's last place of abode, or dwelling-house, and if he shall not appeal), to be levied by the constable where the offender inhabits, by warrant of a justice, not being a dealer in woollen cloth, by distress, rendering the overplus, on demand, charges of distress and sale being first deducted, to be distributed (after deducting the charges of conviction) half to the informer, and half to the treasurer, for the expenses of carrying the act into execution; for want of distress to be committed to the house of correction to hard labour for one month (5). Persons aggrieved by any order or warrant upon any conviction, by any justice or justices, may appeal to the next quarter sessions, to be held after fourteen days from the conviction, giving ten days notice to the informer; and the justices there may, on confirming or disannulling the orders or proceedings of the justice or justices, award costs (6). By the 5 Geo. 3. c. 51. (which extends to all woollen cloth made in the west riding, except such narrows as are provided for by the 11 Geo. 2. c. 28.), and by the 6 Geo. 3. c. 23. (which extends to all such woollen goods, except as before excepted, and except such woollen goods as are made for blanketing, and striped duffeled blankets,) it is enacted,

How much to be stretched.

(1) 11 Geo. 2. c. 28. s. 8, 9.
(2) s. 5. 11.
(3) s. 6.
(4) s. 10
(5) s. 10.
(6) s. 12

that the justices for the said west riding, not being dealers in woollen cloth, nor occupiers of any fulling mill, shall, at the Bradford midsummer sessions, yearly appoint so many men as they shall think proper, (having been brought up in the manufacture of woollen cloth in the said riding, and under 60 years of age,) to be searchers and measurers of cloth at the fulling mills, and allow them salaries (1). They shall also appoint inspectors, not exceeding twelve in number, of broad woollen cloths, and of the workshops, tenter-grounds, and warehouses, with salaries not less than £20 a year (2), and also supervisors (not exceeding four in number) of the conduct and behaviour both of the searchers and inspectors, with salaries not less than £40 a year, and £10 more if their duty require them to keep a horse, all of whom are to be sworn before they enter in their office (3). They shall also give bond to the treasurer, with a surety in the penalty of £50, duly to account for and pay the money by them respectively to be received in the execution of their office (4). But if any of the officers so appointed shall keep a public house for selling ale, beer, or other liquors, or be concerned in the making, buying, or selling any wool, woollen manufactures, or goods commonly made use of in dyeing, or be guilty of any misbehaviour or neglect of duty in his office, and shall be convicted thereof, by the oath of one witness before two justices, the justices at the next sessions after such conviction, on producing the same, or due proof thereof, may discharge such officer, and appoint another in his room (5). If any of the said officers should die or be displaced, or become incapable by sickness or other accident within the year, one justice near the place may appoint another till next Easter sessions, to be there confirmed, or another put in his place, or during such sickness or incapacity (6). The maker of cloth shall weave or sew into the head of every piece by him made, his name and place of abode, either in distinct letters or words, or in some common or known abbreviations (7). The owner shall pay to the miller, at the fulling mill, for every yard of cloth exceeding fifty-eight yards, whether in one cloth or two short cloths, or ends, which shall be milled in one stock at one time,

WOOL, CLOTH, etc.

Inspectors of Yorkshire cloth.

Forfeiture of office by keeping alehouse, or misconduct.

Clothier to weave his name.

Price of milling.

(1) 5 Geo. 3. c. 51. s. 2. 6 Geo. 3. c. 23. s. 118.
(2) 5 Geo. 3. c. 51. s. 7.
(3) Id.
(4) 6 Geo. 3. c. 23. s. 9.
(5) Id. s. 17.
(6) 5 Geo. 3. c. 51. s. 10.
(7) Id. s. 18. See also 6 Geo. 3. c. 23. s. 13.

WOOL, CLOTH, etc.

Justices to determine.

an halfpenny extra over and above the usual price for milling a stockful of fifty-eight yards (1). All disputes between clothiers and millers relating to the wages for fulling, milling, or scouring, shall, if such miller desire it, and the matter in dispute do not exceed 40s., be determined by one justice, not being a trader or dealer in woollen manufacture, farmer or occupier of a fulling mill, who may on complaint summon the parties, adjudge damages, and give costs not exceeding 10s., and levy the same by distress, if not paid in ten days (2). The searchers shall at the fulling mills measure the cloths and ends or half ends there milled, within six and not sooner than four hours after the same shall have been streamed or washed in the grit or mill stream, and if the same same shall not be streamed or washed, then within four hours after they come out of the stock, and such searcher shall, on one end of every such cloth, before it be carried from the mill, affix and rivet a seal of lead, to be furnished by the maker, and stamp in words and figures upon every such rivet, his name and the name of the mill where he is stationed, and upon the residue of the seal the length and breadth of such cloth, together with the number of each of such cloths milled at such mill successively, beginning at No. 1. at the 25th of March yearly, and so continuing progressively to the 25th of March next following, and shall enter in a book, to be provided by the treasurer of the said riding, the name and place of abode of the maker, the colour or sort of the cloth, and the length breadth, and number on the seal, and shall give once a month, to the supervisor within the district, an account of all the cloths milled, measured, and stamped at such mill (3). The owner shall pay to the searcher, for the seal of every whole cloth thirty-five yards long or upwards, 6d.: for every end or half cloth less than thirty-five yards, and more than thirty, 4d.; less than thirty yards, 3d.; which sums shall be accounted for by such searcher to the said treasurer (4). The searcher making default in measuring and stamping, or giving in a false or fraudulent account, shall, for the first offence, forfeit 20s.; for the second offence, he shall forfeit his office (5). If the maker shall take away his cloth before it is measured and stamped, within the times before-mentioned, or before the money be paid for stamping the same, or shall take

(1) 6 Geo. 3. c. 23. s. 19.
(2) s. 20.
(3) 5 Geo. 3. c. 51. s. 3.
(4) Id. See also 6 Geo. 3. c. 23. s. 2.
(5) s. 4.

away his cloth after nine o'clock in the evening, or before five in the morning, unless the same be measured and stamped, he shall forfeit 20s. (1). By 6 Geo. 3. c. 23., if any inspector hath reason to suspect that any cloth shall be in possession of any merchant, buyer, dresser, or cloth-worker, which hath not been truly stamped at the fulling-mill, he may give notice thereof to such person, describing the cloth by the maker's name or seal, which said person shall give two hours notice to the inspector of the time when he intends to put such cloth into water, in order that he may attend the wetting and measuring thereof; and if such person shall put the same into water without such notice to the said inspector, he shall forfeit 20s. And if any supervisor or inspector shall wilfully refuse or neglect to attend for measuring and stamping any cloth or end of cloth as aforesaid for two hours, after notice given to him, he shall forfeit 20s. (2). The maker of cloth called broad cloth, after it is brought from the mill, and before it is put upon the tenter, shall measure the same, and affix and rivet a seal of lead upon the other end, and stamp thereon the length and breadth (3). The owner of every tenter shall measure the said tenter, and mark in figures the true length of yards, at thirty seven inches to the yard, beginning at number one, and marking every yard distinctly on the top bar on the foreside, on pain of forfeiting £5 (4). If any person shall stretch any cloth more than one yard, consisting of thirty-seven inches in every twenty in the length, or more than one inch in twelve in the breadth, beyond the mark stamped by the searcher, inspector, or supervisor, who last measured the same, he shall forfeit for the first half yard overstretched in length 5s., and for every quarter of a yard above such half yard 10s., and for the first inch overstretched in breadth 5s., and for every inch above the first 10s. (5) And if any person shall willingly take off, alter, or counterfeit, deface, obliterate, or cut out, any seal affixed on the said cloth as aforesaid, or the figures, letters, and words thereon stamped, or therein woven or sewed, before the cloth shall be put in papers for the press, or into the frizing mill; or if any inspector or supervisor shall find any cloth without such seal as aforesaid, or find such seal defaced, counterfeited, or altered (unless accidentally lost or maliciously taken off), or shall find any cloth

WOOL, CLOTH, etc.

Inspector to search when cloth not stamped at fulling mill.

(1) 5 Geo. 3. c. 51. s. 5.
(2) 6 Geo. 3. c. 23. s. 7, 8.
(3) 5 Geo. 3. c. 51. s. 6.
(4) s. 22.
(5) 6 Geo. 3. c. 23. s. 15.

WOOL, CLOTH, etc.

which shall appear by the mark, stamp, or seal affixed thereon, to be overstretched, or the loom mark, specifying the name and place of abode of the maker, to be cut out or altered; every person so offending, or the merchant, dresser, clothier, or owner, in whose custody such cloth shall be found, shall forfeit not exceeding 40s., nor less than 20s. (1). It shall be lawful for any person in the striking or plaining of cloth upon the tenters only, to use cards of wire called fine hatters cards, for the better laying the wool and manufacturing the cloth, without being subject to the penalty (2). By the 5 Geo. 3. c. 51. the inspector or supervisor may, in the day-time, enter into any shops, outhouses, tenter-grounds, or warehouses, to search; and any person resisting or refusing to permit the same, shall forfeit £10 (3). The supervisors shall be daily employed in visiting the mills, tenters, tenter-grounds, work-shops, and places within their districts; and every such supervisor shall measure and stamp with a seal of lead, having his name impressed on so many of the said cloths as he conveniently can, and keep an account thereof, and transmit the same, together with the accounts received by him from the searchers, to the justices, at every quarter sessions. And if any inspector or supervisor be negligent in his duty, or shall transmit a false account of the cloths measured, he shall forfeit and lose his office (4). And if any inspector or supervisor shall find any cloth or end, or half cloth, falsely stamped by the searcher, above one inch in breadth in more than one-third part of the length thereof, or above half a yard in length, he shall, within seven days, give information thereof to a justice, not being a dealer, &c., and such searcher shall, on conviction before one justice, forfeit 10s. (5). A maker exposing any cloth to sale without such mark as aforesaid, or without seals as before directed, he shall forfeit 20s. for every such piece (6). It shall not be lawful for any inspector or supervisor to enter into any house, warehouse, or outhouse, of any merchant, dresser, or other dealer in cloth (unless such places shall be made use of for dressing, tentering, or keeping of wet or undressed cloth), under pretence of searching for or examining any woollen cloth, or to search or examine any cloth, after the same shall be put up in papers for pressing,

(1) 6 Geo. 3. c. 23. s. 11.
(2) s. 16.
(3) 5 Geo. 3. c. 51. s. 11. The 23d sect. of this act is repealed.
(4) s. 8.
(5) s. 9.
(6) s. 18.

Wool, Cloth, etc.

or sent to be frized, or otherwise hath been fully manufactured, or fitted for exportation or home consumption (1). The buyer, if he suspect any fraud, may, within 40 days after the sale and delivery of the cloth (and before the same shall have been raised, rowed, dressed, dyed, or put in water), put the same into cold water, not exceeding four hours, and after the same shall be fully wet shall hang the same across a plain rail or horse tree, not less than two hours, nor more than four, and then immediately cause the same to be measured by some sworn searcher, measurer, inspector, or supervisor; and if there shall be found a less quantity in length or breadth in more than one-third part of the length thereof than is mentioned in any of the seals affixed by the said searcher, inspector, or supervisor who before measured the same, in such case the searcher, &c. who last measured the cloth, shall, within three days after such last admeasurement, give information thereof to a justice, not being a dealer, &c. that the searcher, &c. who before measured and stamped the cloth, did wilfully and knowingly affix such false and fraudulent seals to the said cloth; and the searcher or supervisor who affixed such false seal being convicted thereof before such justice, on the oath of such searcher, inspector, or supervisor who last measured the said cloth, or of any other credible witness, shall forfeit for the first inch in breadth or half yard in length that such cloth or end of cloth shall fall short, 5s. and for every other inch in breadth or half yard in length, the further sum of 10s.; and if such searcher, inspector, or supervisor, who last measured the cloth, shall not in three days give information as aforesaid, he shall, on conviction before such justice, forfeit 40s. and his office, and be disabled for ever from holding any office under this act (2). Where such false seal shall be found, the searcher, inspector, or supervisor who last measured the same, shall affix and rivet a new seal, with his name on the rivet, adding the word inspector or supervisor, and on the seal the true length (accounting thirty-seven inches to the yard in length), and the breadth between the lists in inches. And this shall be the rule in payment, except that in order to discourage such fraud, the buyer may retain out of the price double the value of so much as was overstamped, unless the maker shall within three days after notice of such deficiency take the cloth again and repay the purchase money, together

(1) 6 Geo. 3. c. 23. s. 10. (2) Id. s. 4.

Wool, Cloth, etc.

with reasonable expences (1). If the seller or buyer shall suspect that this last admeasurement is false, he may in seven days give information thereof to a justice, not being a dealer in woollen cloth; and if such searcher, inspector, or supervisor, who last measured the same, shall be convicted of having so wilfully and fraudulently offended, by the oath of one witness before one justice, he shall for the first inch in breadth, or half yard in length, falsely measured as aforesaid, forfeit 20s.; and if such cloth or end of cloth shall exceed or fall short more than two inches in breadth, or one yard in length, of the measure so stamped by him, he shall forfeit his office, and be discharged therefrom by the justice, and for ever disabled from holding any office under this act (2). Any person against whom such information shall be made by any merchant, buyer, seller, owner, or dresser of cloth, for false sealing or stamping, may, within two days after notice given to him of such information, go to the house of such merchant, owner, or dresser, and request to see the cloth, and examine whether the charge against him be just, and whether any fraud hath been committed by such merchant, and owner, or dresser; and if any merchant, dresser, or buyer, or owner, shall refuse to permit him to see or examine such cloth (unless the same shall before that time be put in pressers for dressing, or sent to be frized), the prosecution shall cease; and if such merchant or buyer shall refuse, he shall lose all benefit of deduction out of the price as aforesaid (3). And the treasurer may deduct the sums forfeited by the searchers, inspectors, and supervisors, out of their salaries (4). By the 6 Geo. 3. c. 23., informations of offences (not otherwise directed), shall be made on oath (5), within ten days after the offence shall be discovered; the same to be heard and determined on the oath of one witness before one justice, not being a dealer in woollen cloth, nor occupier of a fulling mill, notice being first given to the person charged, and the penalties, after deducting charges of the conviction, to be distributed, half to the informer, and half to the treasurer of the said West Riding; the part belonging to the treasurer shall be received by the justice, and by him paid to an inspector or supervisor of broad woollen cloth, and the said justice shall within three days send an account thereof to the said treasurer (6). If any offender

(1) 6 Geo. 3. c. 23. s. 5.
(2) s. 6.
(3) s. 12.
(4) 5 Geo. 3. c. 51. s. 16.
(5) Id.
(6) 6 Geo. 3. c. 23. s. 19.

Wool, Cloth, etc.

shall for ten days after conviction and notice thereof given to him at his dwelling-house, or last place of abode, refuse or neglect to pay any forfeiture by him incurred, by reason of this or the said recited act, or shall not give notice of appeal, then and not before, the said justice, or any other such justice (on certificate of the conviction sent to him) shall issue his warrant of distress to the constable of the town or place, or bailiff of the liberty where the offender dwells, requiring him to levy the same by distress and sale, rendering the overplus, if any, and also after paying the charges of such distress and sale; and where no sufficient distress can be had, the said justice shall commit him to the house of correction for any time not exceeding three calendar months (1). Persons aggrieved by any order, warrant, or determination of such justice, may appeal to the next sessions, which shall not be held within fourteen days after the cause of appeal shall arise, giving ten days' notice to the party; and the sessions may, if they confirm or disannul the order, &c. allow costs to either party, to be levied and paid as usual in cases of appeal from any order of justices to the sessions (2). The justices, inspectors, and supervisors, shall return to the sessions, from time to time, an account in writing of all convictions that have happened within their knowledge, and of the penalties levied and made payable to the treasurer, and the inspectors and supervisors shall pay to the treasurer, within three months after receipt thereof, all sums by them received on account of such convictions; and every person neglecting or refusing to transmit such account within 20 days next after any such sessions, or to pay such sums within three calendar months after receipt thereof, shall, on conviction on the oath of one witness before two justices, forfeit £10, to be recovered in the same manner as other penalties (3). The money in the treasurer's hands, received on account of the duties and forfeitures, shall, after paying the expenses of the acts, be applied for payment of the salaries of the searchers or measurers, inspectors or supervisors, in such manner and proportion as the said justices at their midsummer sessions yearly shall appoint (4). The justices, after payment of the charges of the costs at the said midsummer sessions yearly, may make an order for increasing or diminishing the rates to be paid for measuring, stamping, and sealing, so as never to exceed the rates above specified (5).

(1) 6 Geo. 3. c. 23. s. 20.
(2) s. 21.
(3) s. 22.
(4) s. 24.
(5) s. 25.

WOOL, CLOTH, etc.

Privileges to woolcombers.

The 59 Geo. 3. c. 112. respects the application of the surplus monies paid for measuring, &c. woollen cloth in the West Riding of Yorkshire (1). The stat. 49 Geo. 3. c. 109. in consequence of apprehensions entertained by persons educated and employed in manufacturing woollen cloth, that in consequence of the use of machinery in the manufactory, and of the repeal of the 5th Eliz. as to apprentices in it, the employment of many of such persons was likely to be diminished, in which case many of them might be willing to employ themselves in such other trades as they might be apt for, but would be hindered from exercising those trades in certain corporations, and other places in Great Britain, on account of the bye-laws and customs of those places, or of the stat. 5 Eliz., enacts, that every person who shall have served an apprenticeship to any branch of the woollen manufacture, or is by law entitled to exercise the same, and also his wife and children, may set up and exercise such trade, or any other trade or business which they are apt and able for, in any town or place without suit or molestation, by reason of using such trade, and shall not, during the time they exercise such trade, be removeable to their place of settlement by virtue of any law now in being relative to settlements, until they become actually chargeable. And if any such person, or his wife or child, shall be prosecuted for exercising any such trade as aforesaid, on his making it appear that he has served a legal apprenticeship to the said trade, or is the wife or child of any person who has served such apprenticeship, he shall upon the general issue pleaded be found not guilty, and shall have double costs (2). Two justices, where any such person, or his wife and family shall exercise such trade, may summon every such person before them, and examine him on oath, concerning the place of his last legal settlement, who shall obey such summons, and make oath accordingly; and such justices shall give an attested copy of such affidavit so made before them, to the person making the same, in order that he may produce it when required, which attested copy shall be admitted as evidence as to such settlement before the justices at any session; and if such person or his wife or child shall again be summoned to make oath as aforesaid, then on producing such attested copy, he shall not be obliged to take any other or further oath, but shall have a copy of such attested copy, if required (3). But this act does not prejudice

(1) See Burn, J., tit. Woollen Manufacture.

(2) 49 Geo. 3. c. 109. s. 5.

(3) s. 6, 7.

the universities (1), nor extend to the city of London (2); nor does it annul any contract of apprenticeship, whereby a person shall bind himself as an apprentice in any of the occupations thereof for any period allowed by law; provided always, that such apprenticeship shall not be required as a previous qualification for exercising any branch of the woollen manufacture, either as a master or journeyman (3). This act repeals so much of the 5 Eliz. c. 4. as relates to apprentices to the woollen manufacture; and nothing in this act shall revive any act repealed by any act, or part of any act repealed hereby (4). The premises of the manufacturer are protected from violence by enactments of great severity. To destroy goods in the loom, or to steal from the bleaching or drying grounds, is a capital felony. The provisions are as follows: If any person, by day or by night, break into any house or shop, or enter by force into any house or shop, with intent to cut or destroy any serge or other woollen goods in the loom, or any tools employed in the making thereof, or shall wilfully and maliciously cut or destroy any such serges or woollen goods in the loom or on the rack, or shall burn, cut, or destroy any rack on which any such serges or other woollen goods are hanged in order to dry, or shall wilfully and maliciously break or destroy any tools used in the making any such serges or other woollen goods, not having the consent of the owner so to do, every such offender shall be guilty of felony without benefit of clergy (5). To cut and take, steal, or carry away any cloth or other woollen manufactures from the rack or tenter, in the night-time, is felony without benefit of clergy (6). If any cloth or woollen goods, on the rack or tenters, or any woollen yarn or wool left out to dry, shall be stolen or taken away in the night, any justice, on complaint made in ten days after by the owner, may issue his warrant to any peace-officer, in the day-time, to enter into and search the houses, outhouses, yards, gardens, or other places belonging to the houses of every person whom such owner shall upon his oath declare to such justice he suspects to have stolen, taken away, or received the same; and if the officer shall find any such cloth, woollen goods, or wool, which

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(1) 49 Geo. 3. c. 109. s. 8.
(2) s. 9.
(3) s. 3.
(4) s. 4.
(5) 22 Geo. 3. c. 40. s. 1.; and by s. 4. so much of the 12 Geo. 1. c. 34. as enacts a punishment for the above offence, is repealed.
(6) 22 Car. 2. c. 5. s. 3. stat. 43 Eliz. c. 10. is repealed by 49 Geo. 3. c. 109.

Wool, Cloth, etc.

from the information of the person making such oath he shall have reason to suspect to have been so stolen, &c., he shall apprehend the person in whose custody or possession the same shall be found, and carry him before some justice of the same county, &c.; and if he shall not give a satisfactory account how he came by the same, or in a convenient time, to be set by the justice, produce the party of whom he had the same, or some other credible witness, to depose on oath his property or right to the possession thereof, he shall be convicted of stealing or taking away the same, and shall for the first offence forfeit to the owner treble value; and in default of payment thereof in the time appointed by such justice, he shall issue his warrant to levy the same by distress and sale, returning the overplus, if any; and in default of distress, shall commit him to the common gaol where he shall be apprehended, for three months, or till he shall pay the same; for the second offence, treble value and six months imprisonment; for the third offence, such justice shall commit him to the common gaol till the assizes, and if he shall be there convicted he shall be adjudged guilty of felony, and transported for seven years. But persons aggrieved, except on the third conviction, may appeal to the next general quarter sessions, whose order therein shall be final. But nevertheless this act shall not alter any former law in force for the punishment of any person stealing or receiving such cloth or goods, except where the proof is laid on the offender. (1)

(1) 15 Geo. 2. c. 27.

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# APPENDIX

TO

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## CHAP. XII.

END OF THE SECOND VOLUME.

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